

# CABINET

## Lancaster Caton Road (Phase 3) Flood Risk Management Scheme

5<sup>th</sup> December 2017

### Report of Chief Officer (Regeneration and Planning)

<b>PURPOSE OF REPORT</b>				
To update Members on the proposed project to improve the River Lune flood defences and to authorise further actions to assemble the funding package and progress the project.				
Key Decision	X	Non-Key Decision		Referral from Cabinet Member
Date of notice of forthcoming key decision		6 <sup>th</sup> December 2017		
This report is public				

#### RECOMMENDATIONS OF COUNCILLOR JANICE HANSON

- (1) Members note the allocation and accept the offer of £2M funding from North West Regional Flood and Coastal Committee (RFCC) when formally awarded and delegate to the Chief Officer (Regeneration and Planning), in consultation with the Cabinet Portfolio Holder, authority to use approximately £200K to undertake design development work (Stage 1) and submit a planning application.
- (2) That delegated authority be given to the Chief Officer (Resources) to update the General Fund Revenue Budget to reflect the design development expenditure and associated RFCC funding as appropriate.
- (3) Subject to approval of the ERDF outline application a full European Funding application is submitted.
- (4) Members note the indicative allocation of £2.6M from the Environment Agency's Flood Defence Grant in Aid (FDGiA) and authorise officers to progress and submit the Full Business Case to formally secure the funding.

- (5) **Officers work with the major Caton Road business to negotiate / secure private funding contributions and also investigate any further public funding avenues to meet the full scheme construction costs.**
- (6) **That agreement of the above is on the basis that:**
- **the scheme is wholly externally funded and that there is no commitment to allocate city council capital or revenue funding;**
  - **the council would withdraw from scheme development at any early stage without the risk of RFCC grant clawback if it transpires that reasonably, there is no prospect of securing sufficient stakeholder buy-in and/or financing for the scheme.**
- (7) **A further report is made to Cabinet to ensure financial, procurement, legal and operational implications are resolved prior to acceptance of any ERDF funding, FDGiA funding and private sector contributions; and before contractually committing to implementing the construction phase (Stage 2).**

## **1.0 Introduction**

- 1.1 Members will recall that the serious flooding in December 2015 as a result of Storm Desmond badly affected the business parks along Caton Road. The Environment Agency (EA) proposed an extension of the previous two phases of flood defence works along the south bank of the River Lune. Cabinet considered a report on the Lancaster Caton Road (Phase 3) Flood Risk Management Scheme (FRMS) in February 2017 where it was resolved (Minute ref: 59).

*(1) That Officers be authorised to submit an outline bid for ERDF Funding by the target date of 17<sup>th</sup> February 2017, on the basis that:*

- a. there is no commitment to allocate capital or revenue funding to the scheme;*
- b. that any move into further project development would require costs/any other financial risk exposure to be underwritten by the Environment Agency and/or other stakeholders; and that*
- c. the council would withdraw from project development at any early stage if it transpires that reasonably, there is no prospect of securing sufficient stakeholder buy-in and/or financing for the project.*

*(2) That a progress report be presented back to Cabinet on the above, at the appropriate time.*

*(3) That the Chairman of Overview and Scrutiny Committee be asked to waive Call-In on this occasion because a call in period would pass the deadline for submission of an outline bid for ERDF funding.*

This report provides an update on the proposed project to improve the River Lune flood defences and to authorise further actions to assemble the funding package and progress the project.

- 1.2 Members will also recall that while Lancaster city centre was also flooded the emerging view from EA have identified a separation between this flooding event and the inundation/overtopping from the Lune which affected the Caton Road industrial estates. EA are investigating separate mitigation measures for Lancaster city centre and its catchment – known as “Phase 4” - and that the Lune defence measures under Phase 3 can proceed as a stand-alone initiative. Members will be provided with an update on city centre Phase 4 progress as information is received from the EA.

## **2.0 Background**

- 2.1 Following the production of Lancaster Flood Risk Management Strategy (2005), Phase 1 and 2 were progressed to construction and completion, however Phase 3 was fully dependent on funding from other sources due to the limited number of residential properties at flood risk. Phase 4 (Lancaster City Centre) is currently within the early scoping stages but is likely to address flooding to a significant amount of residential properties and therefore qualify for full public funding. Although these are separate schemes, both project teams are working together to share understanding of each scheme to help with communications with affected communities.
- 2.2 The Phase 3 FRMS aims to address the unacceptably high level of flood risk immediately upstream of Lancaster city centre between Halton Weir and Skerton Bridge. The most vulnerable parts of this area have a 1 in 5 (20%) chance of flooding from the River Lune in any given year. Construction of a flood risk management scheme in this location would protect the Riverside Industrial Estate, the Lansil Industrial Estate and the Caton Road Industrial Park from flooding. On the right bank of the river, improved protection for 20 residential properties is also proposed, a further 69 residential properties within Halton will also be considered with further modelling to ensure that any proposed defences will not increase the flood risk in this location. Halton is being considered by the Environment Agency under a separate project.
- 2.3 The banks of the River Lune provide a long established employment area which has been located on Caton Road for at least 100 years since the construction of the old Standfast Works (the paper mills and feed mill required proximity to a water source). The industrial estates sit on a strategic gateway into Lancaster City Centre and have excellent accessibility to the M6 motorway and the Port of Heysham which has increased further since early 2017 upon the completion of the new link road.
- 2.4 These employment areas have been subject to flooding in the past, most notably flooding in December 2015 which inundated around 20 residential and 90 industrial/commercial buildings and caused a power outage in a critical electricity substation affecting 55,000 properties in Lancaster. The individual businesses, which employ over 2000 full time equivalent workers, suffered extensive damage (one individual business insurance claim amounted to £11M) and difficulties with ongoing insurance cover are reported

into late 2017. Many businesses are continuing without full or any insurance, are self-insuring or are looking to relocate.

- 2.5 During August 2017 Lancaster city centre again suffered localised flooding to businesses. There are also records of flooding in 1995 which caused in excess of £4M of damage and in 2005 flooding occurred to a lesser extent. The main mechanism of flooding in this area is when high tides coincide with high flows on the River Lune and causes overtopping and inundation. The Lansil and Riverside industrial estates are currently protected by informal defences which are estimated to provide a 1 in 10 to 1 in 25 year standard of protection respectively.
- 2.6 Without intervention the Standard of Protection will decline further due to climate change. The Environment Agency and Lancaster City Council agree that doing nothing in this location is not considered viable as it leaves an unacceptably high level of flood risk leading to the likelihood of businesses closing or moving away. The Lune Catchment Flood Management Plan (CFMP) predicts that flood water levels within Riverside and Lansil Industrial Estates may increase in the order of 0.4m by 2100 as a result of climate change. Consequently, doing nothing is not consistent with Environment Agency's or Lancaster City's Council objectives for regenerating this area or adaptation to climate change.
- 2.7 Subsequent to the December 2015 flooding, the Government committed £350 million of funding to improve flood defences. This funding has been allocated to schemes predominately protecting residential properties and transport networks. No funding has been allocated to Lancashire and Lancaster Phase 3 is very unlikely to secure any similar funding in the future due to the high number of businesses and low number of residential properties benefiting.

#### Proposed Project and Costs

- 2.8 The initial scheme design and feasibility work has been undertaken by consultants working on behalf of the EA who have undertaken a high level Strategic Outline Case and design / cost. The preferred option is to construct a dwarf flood defence wall with seepage cut off along left bank of the Lune between motorway slip road and A6 Eastbound (Skerton Bridge). This option assumes a predominantly reinforced concrete defence which would be located between the footpath and existing buildings (Appendix 1). The project cost, including design development and contingencies, is currently estimated at £9.4M.
- 2.9 The project will:
- Improve flood defences to homes and businesses from a 1 in 5 to a 1 in 100 level of protection.
  - Benefit 102 businesses and 20 residential properties with a current 1% or greater chance of flooding each year. These include multi-million pound manufacturing businesses.
  - Allow businesses to improve their insurance cover.
  - Increase property values generating more income for public services.

- Benefit associated local, regional and national business interdependencies with other sites in the business supply chain
- Reduce the risk of flooding to 20 residential properties.
- Bring employment land and property back into use. Good transport links are a key factor in firms' decisions to locate across the three business parks and, for the mills (two paper mills and a feed mill), proximity to a water source (River Lune) is a requirement for their location.
- Safeguard over two thousand full time equivalent jobs are currently provided across the employment sites providing £37.3m in benefits per year in Gross Value Added (GVA) to the economy over the a 100 year appraisal period.
- Potential to deliver 28.2 hectares of river and bank habitat improvement and deliver for Special Areas of Conservation, Water Quality and Bathing Water directives as well as for fish, bats, birds and otters according to an initial habitats survey.
- Produce other environmental benefits including the resurfacing of the foot and cycleway which serves Lancaster city centre

2.10 The EA will not provide further direct project management beyond the current Strategic Outline Case stage. In order to deliver this proposal the city council will need to take on project management, design/development and contract delivery (i.e. as it already does for coast protection sea wall defence type schemes). Assistance and information will be provided from the EA's local Lancashire team and design/development funding has been secured (see below).

### Funding

2.11 The scheme is not fully fundable with EA Flood Defence Grant in Aid funds (FDGiA) as it protects mainly business properties rather than residential properties. EA's own funding formula for those schemes which predominantly benefit businesses can potentially allocate £2.6M, and an indicative allocation has been made in their budget based on information contained in the completed Strategic Outline Business Case undertaken by their consultants. A formal funding offer will only be made following consideration of a detailed Outline Business Case by the EA's Large Project Review Group which has to be submitted by the city council. A further £2M has been formally approved by the North West Regional Flood and Coastal Committee (RFCC) finance sub group at its meeting on 4 April 2017. RFCC funding can be used for design/development costs.

2.12 Under the current 2014 to 2020 European funding programme an Outline Application for approximately £3.1M (under Priority 5 Promoting climate change adaptation) is being considered. This was the maximum that EA advised should be applied for given other regional priorities. Approval to proceed to Full Application is likely to be granted prior to this December Cabinet meeting. More detailed work, currently estimated to cost £200K, will be required to inform the ERDF Full Application and progress the scheme in a timely way. These design/development costs will be eligible ERDF spend should the Full Application be approved and will initially be funded through the RFCC allocation. An ERDF Full Application will be expected to be delivered

in summer 2018.

- 2.13 The ERDF funding has a number of time critical drivers imposed by the decision to leave the EU. The Government has advised that ERDF Funding must be contracted by March 2019 and all match funding and planning permissions must be in place before this time. All match funding is likely to be required to be in place in order for the Full Application to be approved.
- 2.14 Given current likely funding approval routes there is a project funding gap of approximately £1.7M. Officers held a general update meeting on scheme progress with Caton Road businesses at the Holiday Inn in July. The idea of business contributions was discussed. Businesses were unwilling to openly discuss the level of individual contributions they could potentially make but were interested in exploring the idea of a fair apportionment mechanism of contributions based around property rateable values. The Government has also legislated to ensure business contributions to Flood and Coastal Erosion Risk Management (FCERM) projects are tax deductible.
- 2.15 Officers have been in individual discussion with the largest businesses and Members will be briefed on the outcome of the approaches made to date prior to the Cabinet meeting. Members should note that dealing with multiple private sector contributions would require individual legal agreements.
- 2.16 Electricity North West's (ENW) substation was badly impacted by the floods. EA have discussed with ENW if there was any possibility of working on a joint solution to both organisations' ambitions. ENW were under considerable pressure from their regulator OFGEM to future proof their sub-station by 2019 and have completed a multi-million pound scheme to protect their substation. There is however a further ENW reinforcement scheme in progress which is currently planned to take an electricity cable down the length of Caton Road. Officers are working with ENW to explore synergies and cost advantages with the Phase 3 scheme.

### **3.0 Implications for the City Council**

- 3.1 Further work is needed on designing and developing the project and there is not a firm funding package for the full costs of the project defined at the current time. As the EA cannot take on further core project development duties, the only body equipped to progress the project in all its aspects and with some priority is the city council. In our role as lead for the recovery process following Storm Desmond, and as the local Economic Development Authority it is entirely appropriate that this council consider doing this.
- 3.2 From a purely technical point of view this is acceptable – the council has a track record in designing and delivering major flood defence schemes and the proposal has a relatively simple engineering concept at its heart. This is the preferred option to protect the Caton Road employment sites from the risk of future inundation from the Lune. Due to the lack of availability of comprehensive insurance a future event has the potential to end much of the business activity and sterilise a large area of land with resulting impact on the local economy and extensive dereliction.

3.3 To move the scheme forward the following is required:

- Authority is given to accept the offer of £2M funding from RFCC when formally awarded and use approximately £200K to undertake design development work and submit a planning application in support of an ERDF application, subject to there being no clawback for this element, should the scheme not progress to full implementation.
- Subject to approval of the ERDF outline application a full European Funding application is submitted.
- Officers progress the Full Business Case to secure £2.6M EA FDGiA grant
- A tender is issued and contract awarded for the whole scheme with an initial design/development phase with full contract award to follow agreement of full scheme funding and statutory approvals.
- Officers work with business to secure private funding contributions and secure any other public funding contributions required to meet the funding gap.

3.4 The EA through their Next Generation Supplier Arrangements project has established a Water and Environment Management (WEM) Framework. Formalised in 2013, the Water and Environment Management Framework provides access to the best suppliers in Flood and Coastal Risk Management. It is intended to use this framework (using a phased approach) to procure project services and a main contractor as the WEM is currently considered by EA and DCLG to be OJEU and EU funding procurement compliant. However, some doubts remain as to whether the framework is able to offer complete certainty in regard to ERDF compatibility as to date is unproven through the ERDF Article 14 audit process and therefore scope for changes in the main construction contract procurement route have been allowed for in the tender documents to safeguard the council's position (refer to Legal Implications).

**4.0 Details of Consultation**

4.1 The overall idea of a flood defence scheme along the Lune has been raised with the businesses along Caton Road who are in full support of a scheme being developed and delivered.

**5.0 Options and Options Analysis (including risk assessment)**

5.1 The following options can be considered:

	<b>Option 1: Do nothing</b>	<b>Option 2: Agree to accept £2M RFCC funds; progress a full ERDF application; progress an FDGiA Full Business Case; secure other private and public funding contributions; and issue and accept a tender for the design / development phase only (Stage 1).</b>
Advantages	The city council does not have to take on a major capital scheme.	<p>Gives the best chance of a scheme to be delivered and develop / securing a full funding package.</p> <p>Begins the process of applying more certainty to scheme costs and deliverability.</p> <p>More detailed work on costs and deliverability is required to support planning application, ERDF full funding application and FDGiA Outline Bsuiness Case.</p>
Disadvantages	<p>Divestment from industrial estates; leakage of employment and business from the sites potentially to outside Lancaster district.</p> <p>Reputational risks of being seen to not support the scheme</p>	<p>Engages the council and human resources in the development of a major capital project.</p> <p>While a full ERDF application does not commit the council to accepting funding there is an expected timetable for a full application approval and acceptance.</p> <p>Additional matching funding must be secured prior to ERDF and scheme approval.</p>
Risks	<p>Divestment from industrial estates; leakage of employment and business from the sites potentially to outside Lancaster district.</p> <p>Reputational risks of being seen to not support the scheme.</p>	<p>No current certainty on delivery costs or complete funding package.</p> <p>Reputational risks of delaying delivery and raising expectations if there is no certainty on funding.</p> <p>Engaging in development phase without certainty of the funding package may raise expectations (although the council is not committed to any contractual obligations).</p>

## 6.0 Officer Preferred Option (and comments)

- 6.1 The preferred option is Option 2. This decision allows the council to accept RFCC resources to progress the detailed design and bring more certainty to deliverability and costs in order to inform other funding applications.



Progressing a phased tender under the WEM framework will give the council the detail it requires to secure funding and statutory approvals and also mean that a preferred contractor is available to deliver the scheme immediately on full funding being secured for the whole scheme, confirmation of WEM compatibility and statutory approvals being granted.

- 6.2 While progressing a full ERDF funding application does not commit the council to accepting ERDF funds, or progressing a full scheme, more detailed work has to be undertaken if the application is to be successful and for there to be the a chance of meeting ERDF contracting and delivery deadlines and the EA's Outline Business Case requirements for FDGiA. Option 2 also allows officer to explore in more depth the appetite of the major businesses to assist with significant financial contributions and continue to investigate other potential public funding sources.
- 6.3 Currently the EA and the County Council (LLFA) are concentrating on developing the Phase 4 project for the City Centre. Left to the LLFA and the EA's own priority scoring mechanisms a scheme to improve protection for this significant and important industrial area may not come forward in the medium or even long term.

## 7.0 Conclusion

- 7.1 There remains an acute need to promote this scheme to help secure its delivery and the proposed course of action represents the next most appropriate route towards achieving a positive outcome, both meeting the council's regeneration objectives and having wider social, economic and environmental impacts. In summary the current estimated cost of the project is £9.4M (including a substantial contingency "optimism bias").
- 7.2 Contributions to this cost which are likely to come from external sources are :-

RFCC	£2M
FDGiA	£2.6M
ERDF	£3.1M
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<b>Total</b>	<b>£7.7M</b>

The current shortfall to be met from business or other contributions is currently £1.7M although this will be clarified and amended as the detailed design phase is progressed.

## RELATIONSHIP TO POLICY FRAMEWORK

Economic Growth is a high level Corporate Priority for the City Council. The flooding risk for this important industrial areas undermines business and investment confidence. The emerging Local Plan cannot identify extensive new areas for employment development to replace such an area therefore the priority approach should be to increase the level of protection to restore business confidence.

In terms of climate change, the scheme works will be climate change resilient, applying the agreed national climate change allowances to the raised defences to ensure that the scheme is 'future proofed'. Walking and cycle paths, will be improved, and the river banks will be planted and managed to encourage greater habitat and biodiversity, increasing its amenity value for locals and visitors. The scheme will also deliver water quality including bathing water improvements as there will be reduced likelihood of potentially polluted flood waters from the location running off the industrial areas and into the River Lune and Morecambe Bay.

## **CONCLUSION OF IMPACT ASSESSMENT**

**(including Health & Safety, Equality & Diversity, Human Rights, Community Safety, HR, Sustainability and Rural Proofing)**

Severe impact from flooding on health and safety of employees and customers to commercial premises. Wider community impact where electricity supply threatened due to flooding. Evidenced as severe from Storm Desmond events.

## **LEGAL IMPLICATIONS**

Legal Services have been consulted and comments inserted within the body of the report where appropriate. However, specifically in relation to the Options would make the following further observations:

### Design/Construction Contract - EA WEM Procurement Framework/Agreement

It is intended to use the Environment Agency Water and Environment Management framework to procure a partner contractor (using a phased approach) which will comply with the Lancaster City Council contract procedures rules subject to the following issues being resolved.

The EA through their Next Generation Supplier Arrangements project established a Water and Environment Management (WEM) Framework. Formalised in 2013, the Water and Environment Management Framework provides access to the best suppliers in Flood and Coastal Risk Management. The WEM Framework is a commercial agreement between the EA, consultants and contractors ('suppliers') with an agreed suite of terms for the award of individual contracts to deliver projects for Flood and Coastal Risk Management (FCRM). The framework is available for use by Local Authorities and, in particular, Lead Local Flood Authorities (LLFAs), as well as other Risk Management Authorities in the Defra family. This framework was extended in June 2017 for two years, under Contract Regulations 2015 frameworks can only be for a period of four years except in exceptional circumstances, therefore the validity of the extension; although stated as OJEU and European funding compliant by EA and DCLG officers; is to date unproven through independent audit.

There is therefore a doubt as to whether the WEM framework would pass the most stringent ERDF audit procedure and the council could be at risk of clawback. To mitigate this risk, officers will include the provision to terminate the contract after Stage 1. This is not a concern for the initial design development phase costs (as this could be removed as an "eligible" cost for ERDF purposes), however, for full construction costs there needs to be certainty that the procurement route is ERDF compliant. If there are any doubts around WEM compatibility the contract will be terminated after Stage 1 and the main construction phase (stage 2) will be subject to a separate compliant OJEU process. If there are any changes to the preferred design/build procurement route this will be highlighted in a future report.

### Financial contributions

In negotiation with the major Caton Road businesses should private sector contributions be offered there will be a need to consider a mechanism by which the contributions can be formally secured / contracted and paid when required.

### Other matters

Planning approval will be required for the implementation of the scheme.

## **FINANCIAL IMPLICATIONS**

There are no additional financial implications arising for the council at this stage in submitting a full bid for ERDF funding for this scheme, i.e. the city council will not be contractually bound to undertake delivery of the proposed capital scheme.

The council will need to use a proportion of the £2M approved for use by the North West RFCC finance sub group for some further detailed design development costs which is necessary to take the scheme forward and give more certainty on key aspects of cost and deliverability. It is not expected that there will be any grant clawback risk arising for this element should it not prove possible to secure sufficient stakeholder buy-in and/or financing for full scheme implementation, however.

The city council is being asked to take the lead on this occasion by the EA, rather than the Lead Local Flooding Authority, (i.e. Lancashire County Council) as the LLFA are working up another flood defence scheme also benefitting the Lancaster District as outlined in this report and who have advised that they cannot manage both. Similarly, EA have advised that due to their role in assessing ERDF flooding funds nationally, this then precludes them for bidding for ERDF funds on a project by project basis and directly delivering themselves.

At this stage, as no detailed scheme design/development work has been undertaken, it is not possible for city council officers to undertake a full financial appraisal. The route to securing the remaining funding (at current cost estimates of £9.4M which may go up or down) is dependent on the response of the private sector and the major businesses, to provide substantial contributions, i.e. contributions towards the circa £1.7M funding gap. Therefore, due to the uncertainty and risk associated with the total funding package required, a report would need to be brought back to members outlining the full financial, procurement, legal and operational implications, prior to accepting ERDF funding if successful, FDGiA funding and private sector contributions and progressing to scheme implementation (Stage 2) and on the basis that the scheme is wholly externally funded.

## **OTHER RESOURCE IMPLICATIONS**

**Human Resources:** From existing staff resource and consultants funded through RFCC.

**Information Services:** None

**Property:** The land upon which flood defences could be constructed is in city council ownership.

**Open Spaces:** The Millennium Cycleway would be impacted during construction.

**SECTION 151 OFFICER'S COMMENTS**

The s151 Officer has been consulted and has no further comments.

**MONITORING OFFICER'S COMMENTS**

The Monitoring Officer has been consulted and has no further comments

**BACKGROUND PAPERS**

none

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