

CABINET

Lancaster Caton Road (Phase 3) Flood Risk Management Scheme

3 September 2019

Report of the Director Economic Development and Regeneration

PURPOSE OF REPORT

To update Members on the progression of the River Lune flood defence scheme. The report reviews the scheme as it enters the preliminary site preparation and construction phase. Commentary is provided on the current estimated forecast outturn construction cost and project risks. Options and recommendations on the need for additional council funding to offset specific scheme scope and specification risks are considered.

Key Decision

X

Non-Key Decision

Referral from Cabinet Member

Date of notice of forthcoming key decision

5 August 2019

This report is partially exempt from publication by virtue of paragraph 3, of Schedule 12a of the Local Government Act 1972.

RECOMMENDATIONS OF COUNCILLOR TIM HAMILTON-COX

- (1) Cabinet agrees a further contribution of £489K towards the critical priority implementation and scope risks identified in the report (with growth of £10K per annum revenue costs).
- (2) Officers continue to explore and secure all potential additional public and private sector funding contributions to reduce the call on council funding.
- (3) The Section 151 Officer to update the General Fund Revenue Budget and Capital Programme to reflect the decisions taken.

1.0 Introduction

- 1.1 Members considered a report on the Lancaster Caton Road Flood Defence Scheme at the Cabinet meeting of 15 January 2019. The following key resolutions were agreed in order to progress the project design development

and proceed towards construction (minute ref: 79).

- That Cabinet agree a contribution of up to £847K towards the capital costs of the scheme, and growth of £17K per annum revenue costs of this capital investment should the scheme proceed to contract;
- That in order to ensure major construction work can proceed over the spring/summer period and avoid the need for contractual stand-still to account for nesting birds, a sum of £92K of the council's approved capital funding is used to undertake tree felling, site-clearance and other preparatory works in anticipation of the main contract being agreed.
- That on receipt of a formal letter the council accepts an offer of up to £3.85M ERDF funds for the scheme, formal acceptance of the offer being delegated to the Section 151 Officer.
- That Officers move to formally secure the anticipated business contributions via contract deed;
- That Officers complete the design/target cost package and a contract is agreed for Stage 2 capital works with VBA Joint Venture Limited (subject to securing the funding to meet scheme costs)

1.2 The preferred build option is a flood defence wall between Skerton Bridge (downstream) and Junction 34 of the M6 motorway (upstream). The defences will consist of 2.7km of wall on the left bank and 0.12km on the right bank (60m of walls and 60m of embankment) on the River Lune adjacent to Caton Road and Aldrens Lane and Halton Road. It assumes a reinforced concrete defence located predominantly on the boundary between the private business / third party land on the industrial estates and the council's land.

2.0 Scheme Progress

Design Development and Planning

- 2.1 Members will recall the scheme 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.
- 2.2 Designer/contractor VBA Joint Venture Limited was appointed, through the EA's OJEU compliant Water and Environmental Management Framework, to undertake the initial Stage 1 design and survey work. The design has been continually refined to secure more cost certainty in order to develop the Stage 2 construction contract details.
- 2.3 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.

- 2.4 The full details of the approved scheme are available through the council's planning portal (refer to link in Background Papers). It has taken a major effort on the part of the council's officers and contractor team to progress this major infrastructure project to this stage in a relatively short period of time.

Funding

- 2.5 As noted in previous reports the scheme was not fully fundable with Environment Agency Flood Defence Grant in Aid (FDGiA) as the grant is designed to protect mainly residential rather than business properties. As the scheme developed and funding calculator information was refined the funding formula gave an FDGiA allocation of £3.285M (inclusive of current approved design fees). The Outline Business Case has since been approved by the EA's National Project Assurance Service, an offer letter received and signed by the council.
- 2.6 A further £2M (inclusive of current approved design fees) had been previously approved by the North West Regional Flood and Coastal Committee (RFCC) finance sub-group at its meeting on 4 April 2017. For the purposes of EA budgeting both FDGiA and RFCC funds are both considered to be EA funds.
- 2.7 Under the current 2014 - 2020 European funding programme a full application for £3.85M (from Priority 5 Promoting climate change adaptation) was submitted. The funding bid has been approved and an offer letter accepted by the city council which was conditional on match-funding approval being secured by 31st July 2019. The deadline of 31st July was a "final" date for the council to commit to a total approved cost/funding package or risk losing access to the ERDF resources.
- 2.8 The council has also made a significant cash contribution and officers have also secured private sector contributions from several major employers (refer to Appendix 1).

Scheme Costs

- 2.9 The council has committed to a scheme costing approximately £10.25M (inclusive of all design development fees incurred to date) that has been developed to both reflect the approved funding package currently approved/contracted, and meet the critical deadlines imposed by the ERDF offer.
- 2.10 Over the past 6 months detailed design development phase, investigation of site conditions and assessment of the risks, the preferred option design cost increased to approximately £11M. This was primarily due to the need for additional construction work being required to the depth of wall foundation and dealing with issues around planning, third party services and temporary cycleway provision. In order to deliver a scheme to meet the funding package available, some compromises have been made in the overall balance of risk

management and scope of the preferred scheme to enable it to proceed.

- The risk management sum has been reduced to £497K. This allowance is a minimum in terms of the identified implementation risk associated with the presence of several underground and high level services and other local physical and environmental considerations which there has been insufficient time to investigate in detail. While there is a chance that scheme risks will not materialise, officers believe there is a medium to high risk of the scheme eventually being over budget at its outturn given this current level of risk contingency.
- Design options have had to be taken to postpone the implementation of discrete parts of the scheme which, while having no impact on the overall integrity of the scheme in terms of levels of improved flood protection for the majority of the Caton Road Estates, leaves discrete areas at the current level of flood risk until additional funding and/or savings in scheme costs materialise.

The scheme details are discussed in Appendix 1 (exempt from publication).

- 2.11 EA expects its funded capital projects to achieve 10% efficiencies on the overall cost and these are normally reinvested to secure a better scheme, but this is not guaranteed. The council is continuing to explore funding contributions from county council and private third party interests. In the absence of any immediate contracted conditions the only option to cover the scheme risks and scope issues is for the council to make a further contribution. However, the amount of contribution can vary depending on Members' consideration of the issues and priorities addressed in Appendix 1.

3.0 Details of Consultation

- 3.1 The idea of a flood defence scheme along the Lune has been raised with the businesses along Caton Road who are in support of a scheme being developed and delivered. Several business events and community/stakeholder consultation events have been undertaken and the scheme has been positively received.
- 3.2 In strategic terms the scheme has been identified by Lancashire Enterprise Partnership as the highest priority Flood Risk Management Scheme. The scheme has also been identified within the Environment Agency's 6 year investment programme for funding, by the NW RFCC as a priority for funding for Sustainable Economic Growth as well as identified within the statutory North West Flood Risk Management Plan measures.

4.0 Options and Options Analysis (including risk assessment)

- 4.1 The following options can be considered:

	Option 1: Continue to progress the current affordable scheme.	Option 2: Council agrees an additional contribution to ensure delivery of all the High/Medium/Low priority implementation and scope risks.	Option 3: Council agrees a contribution to cover only the High and Medium priority implementation and scope risks. (Preferred Option)
Advantages	<p>No further immediate funding required.</p> <p>Scheme proceeds with the potential to provide majority of benefits provided by the “preferred scheme” scope.</p> <p>High incentive for “in scheme” cost mitigation and the securing of additional public/private funding.</p>	<p>Allows all priorities to be addressed to a sound risk profile which should allow all identified implementation and scope matters to be addressed.</p> <p>Low risk of unplanned expenditure at a future date.</p>	<p>Potential to deliver against most critical implementation risks.</p> <p>Retains a high incentive for “in scheme” cost mitigation and the securing of additional public/private funding to secure all scheme benefits.</p> <p>Lower risk of unplanned expenditure.</p>
Disadvantages	<p>High likelihood the current risk allowance is too low to cover all identified implementation risks.</p> <p>Discrete areas remain at the current level of flood protection.</p> <p>No guarantee further cost mitigation or funding sources will materialise “in scheme”.</p>	<p>Additional cost to the General Fund revenue budget.</p> <p>Low incentive for “in scheme” cost mitigation and the securing of additional public/private funding.</p>	<p>Additional cost to the General Fund depending on priorities chosen (though lower than Option 2).</p> <p>Residual implementation / scope risks, and potentially reputational risks.</p> <p>No guarantee further cost mitigation or funding sources will materialise “in scheme”.</p>
Risks	<p>Reputational risks of being unable to cover scope risks.</p> <p>Construction cost increases due to identified risks materialising leading to unplanned expenditure.</p>	<p>Implementation and scope risks are minimised.</p>	<p>Potential for certain implementation/reputational risks to remain depending on outcome of scheme.</p> <p>Construction risks minimised through fully supported (in term of funding) risk register</p>

5.0 Officer Preferred Option (and comments)

5.1 As officers have identified a risk of future unplanned expenditure **Option 1** is not preferred.

- 5.2 If Members wish to proceed the critical question is the affordability and scale of the council's contribution. The preferred option is **Option 3: Members agree a contribution to cover High/Medium priority implementation and scope risks.**
- 5.3 Option 3 will result in an additional cost of £17K per annum to the council's budget profile but allows officers to bring more certainty in deliverability and ensures further cost mitigation and saving measures can be explored with confidence.
- 5.4 As previously reported, a financial "return" against the council's total project investment and other benefit are indirect and difficult to assess with certainty. Towards the eastern end of the industrial estates there are significant areas of vacant land. Towards the west of the Caton Road estates are old, low value and redundant property that have received no investment for many years. It is reasonable to assume that, following flood defence implementation, there will be increased confidence to invest in new commercial property and, over time, the Rateable Value (RV) of the area should increase. Available industrial land in the district is constrained and there are few options for new commercial industrial development close to Lancaster.
- 5.5 Officers have estimated that within a decade commercial RV in the area will increase by £1.6M with an additional rate take of around £800K per annum attributable to new development. Under the current business rates retention scheme 40% of the increase would accrue to the council's budget.

6.0 Conclusion

- 6.1 There remains an acute need to promote this scheme to help secure its delivery and the proposed course of action represents the most appropriate route towards achieving a positive outcome, both meeting the council's regeneration objectives and having wider social, economic and environmental impacts.

RELATIONSHIP TO POLICY FRAMEWORK

The impact on the Council's Corporate Priorities are as follows:

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

Clean Green & Safe Neighbourhoods: Walking and cycle paths, will be improved, and the riverbanks 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.

Healthy & Happy Communities: A range of leisure and recreational benefits should accrue from the implementation.

A Smart & Forward Thinking Council: 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'. There is potential to use the infrastructure to secure an early benefit under the council's approach to implementing a project under the Government's Local Full Fibre Network funding stream.

The 2015-2021 North West river basin district flood risk management plan is the statutory plan produced under the Flood Risk Regulations 2009 which transposes Flood Directive in UK law. For the Lune Catchment, the Flood Risk Management Plan concludes that, "Economic growth and development in Lancaster (north and south) could present funding opportunities if complimentary options can be identified to reduce flood risk and allow development. The Environment Agency will continue to work with the Local Enterprise Partnership to identify locations and solutions (Environment Agency, 2016).

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 reiterate advice given on the last Cabinet report:

Construction Contract - EA WEM Procurement Framework/Agreement

The project contractor has been secured through Environment Agency Water and Environment Management framework to undertake the Stage 2 works. The original staged appointment was undertaken in line with the city council's contract procedures rules.

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 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. The validity of the extension has been confirmed by MCHLCG officers but there is still a small possibility that the WEM framework could fail the most stringent ERDF audit procedure, and the council could be at risk of clawback.

The NEC 3 suite of contract management documents will be used throughout project

delivery with various tools to monitor and manage contractor delivery, performance and costs, including Change Tracker, Early Warning Notices, Compensation Events, Project Management Instructions and combined with monthly formal progress meetings will ensure robust project management throughout and reduce the chances of client/contractor litigation.

Public Grant Contributions

Grant contributions have all been secured via a contract in the form of offer letters/commitments which have been to be signed and returned. The council has robust procedures in place to manage the stringent legal requirements of public funds, particularly ERDF requirements.

Private Sector Contributions

The formal contractual mechanism by which the contributions can be legally secured / contracted and paid when required, has been developed in association with Legal Services team (using additional specialist input) who continue to be fully engaged in developing this mechanism.

The form of agreement takes the form of a legal deed with clauses drafted to give protection to the council's interests in the event of default by the contributor. Businesses are not expected to pay the contribution unless and until the flood risk management works have commenced (that is, a contract for the construction works has been signed). Further, while the deed provides that the contribution will be paid 'on demand', businesses can suggest their own staged payment timing to suit their own financial planning.

Other matters

Planning approval conditions need to be discharged and a range of other statutory approvals will be required for the scheme to be implemented.

In terms of State Aid the council is in receipt of a detailed opinion from the Environment Agency State Aid Unit that the flood defence works should be classed as General Infrastructure and, as no aspect of the infrastructure is deemed to offer a selective advantage, is outside the scope of State Aid regulations.

Access to Third Party land will be by agreement and any issues will be handled by the project team in association with the council's legal and property services

FINANCIAL IMPLICATIONS

Cost of a Council Contribution

Under the preferred Option 3, an increase in the council's capital financing requirement in order to fund the additional funding contribution of £489K would result in an annual cost of borrowing charge against the revenue budget of £10K for 50 years. If council agrees Option 2 then a higher annual charge will be incurred over the same period

The General Fund Revenue Budget will need to be updated accordingly in 2019/20 to reflect Members decisions

It has been estimated that, following flood defence implementation, there will be increased confidence to invest in new commercial property and, over time, the Rateable Value (RV) of

the area should increase. Available industrial land in the district is constrained and there are few options for new commercial industrial development close to Lancaster. The following scale has been used in previous funding applications:

	Multiplier
Low (limited income effects)	1.05 – 1.30
Medium (average linkages)	1.10 – 1.50
High (strong income effects)	1.15 – 1.70

As the estimate is “high” a reasonable assumption that within a decade RV will increase by $1.40 \times £4M = £5.6M$ an increase of £1.6M in RV with an eventual additional rate take of around £800K per annum. Under the current business rates retention scheme 40% of the increase would accrue to the council’s budget council’s budget.

OTHER RESOURCE IMPLICATIONS

Human Resources: From existing staff resource and consultants funded through the project.

Information Services: None

Property: Property staff have been involved in the project team. The land upon which flood defences could be constructed is predominantly in city council ownership. Some negotiations on access and infrastructure siting will be necessary but these are not anticipated to be onerous or staff time intensive.

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

SECTION 151 OFFICER’S COMMENTS

Members will need to be aware that should recommendation 1 be approved, the Councils total contribution to the project will rise from £0.847M to £1.336M, with an annual revenue impact of £27K for the next 50 years. In addition, as with all large projects there is risk of time and cost overruns, which may need to be met by the council at a future date.

Business Rates is a significant source of funding for the council and the assumptions provided within the Financial Implications section may well be subject to change with both the outcome of the Government’s Fair Funding Review and an adjustment to the council’s baseline expected within the next couple of years. It is expected that both will have an impact on the actual values retained by the council.

However, this is a significant scheme within the council’s Capital Programme and has been successful in leveraging over £9M of funding from both the Public and Private Sector and is a scheme that will significant benefits not only to those immediate businesses but in the wider area. Having consulted with colleagues and having regard to risk and reward I would support the Officers preferred option.

MONITORING OFFICER’S COMMENTS

The Monitoring Officer has been consulted and has no further comments

BACKGROUND PAPERS

Lancaster Caton Road Flood Defence

Contact Officer:

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Scheme Planning Application and Decision Notice:

<https://planning.lancaster.gov.uk/online-applications/applicationDetails.do?activeTab=summary&keyVal=PA9TF4IZLAV00>

E-mail: progers@lancaster.gov.uk
Ref: