

CABINET

Lancaster Caton Road (Phase 3) Flood Risk Management Scheme

7 August 2018

Report of the Assistant Chief Executive

PURPOSE OF REPORT				
To update Members on River Lune flood defence scheme progress and funding matters and agree the draw down and commitment of an additional portion of Environment Agency funding in order to undertake further critical work on design development and cost planning.				
Key Decision	X	Non-Key Decision		Referral from Cabinet Member
Date of notice of forthcoming key decision		9 July 2018		
This report is public				

RECOMMENDATIONS OF COUNCILLOR JANICE HANSON

- (1) On approval of the Phase 3 business case / financial appraisal Members agree to accept an offer of approximately £2.3M Flood Defence Grant in Aid (FDGiA) and use up to £532K to undertake further design development work in support of funding, planning and delivery of the Phase 3 Flood Defence Scheme.
- (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 FDGiA funding as appropriate.
- (3) Officers continue to 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.
- (4) That agreement of the above continues to be 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 EA grant clawback if it transpires that reasonably, there is no prospect of securing sufficient stakeholder buy-in and/or financing for the scheme.
- (5) A further report is made to Cabinet to ensure financial, procurement, legal and operational implications are resolved prior to acceptance of any ERDF funding and private sector contributions; and before contractually committing to implementing the construction phase (Stage 2).

1.0 Introduction

1.1 Members considered a report on the Lancaster Caton Road Flood Defence Scheme at the Cabinet meeting of 5 December 2017. An update on the proposed project was presented and, in summary the following actions were agreed to assemble the funding package and progress the project detail (minute ref: 55).

- Members noted the allocation and accepted £2M Environment Agency funding (approved through the North West Regional Flood and Coastal Committee (RFCC)) and granted officers authority to use approximately £200K to undertake design development work (Stage 1) and submit a planning application.
- Members noted the indicative allocation of £2.6M from the Environment Agency's Flood Defence Grant in Aid (FDGiA) and authorised officers to progress and submit the Full Business Case to formally secure the funding.
- Subject to approval of the ERDF outline application, submission of a full European Funding application was agreed.
- Officers would continue to 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.

1.2 The recommendations were agreed 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.
- A further report is made to Cabinet to ensure the major 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).

- 1.3 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 and should proceed as a stand-alone initiative.

2.0 Scheme Progress

- 2.1 Members will recall that 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. 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.
- 2.2 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.

Current Proposal and Cost

- 2.3 Following the 5 December 2017 Cabinet, officers appointed contractor VBA Joint Venture Limited, through the EA's OJEU compliant Water and Environmental Management Framework, to undertake the initial design and survey work which they continue to refine to secure more certainty on cost for the various public funding applications. Works undertaken to date include design of the scheme, modelling to ensure the scheme did not cause or exacerbate flooding elsewhere, environmental survey work and ground investigation work including boreholes to ensure defences were going to be suitably sited. A planning application has been submitted and a public information event is planned for early August.
- 2.4 The preferred option is to construct a flood defence wall between Skerton Bridge (downstream) and Junction 34 of the M6 motorway (upstream). The defences will consist of 2.7km of walls 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. This option assumes a reinforced concrete defence which would be located predominantly on the boundary between the private business / third party land interests of the industrial estates and the council's land. The project cost is currently estimated at £9M (exclusive of £200K committed and spent on the initial design development and planning work).

- 2.5 For the purposes of submitting funding bids a cost estimate had to be agreed to reflect the implementation risk and unknowns associated with a scheme at a relatively early stage in its design and implementation cycle. Several underground and high level services are present and a number of local physical and environmental considerations will dictate the final cost and location of the infrastructure once on site.
- 2.6 Members need assurance that there is a prudent balance between cost, funding and scheme risk in order to make decisions without the comfort of a fully specified scheme. Therefore, on the basis of current scheme information and the contractor's view of the remaining implementation and delivery risk, officers consider that £9M has to be secured in order for the project to be placed on a sure delivery footing at this stage. That £9M allows for a provision of £1.6M to cover known risks to date. It is considered that this allowance should give sufficient confidence to enable all stakeholder and third parties to decide whether to progress development of the scheme further, on to the next stage.

Funding

- 2.7 Under the current 2014 - 2020 European funding programme a full application for approximately £3.1M (under Priority 5 Promoting climate change adaptation) was submitted at the end of May. The bid has been accepted for consideration by the Ministry of Housing Communities and Local Government (MCHLG) on the basis of supporting a £9M scheme and will be appraised over the summer. £3.1M is currently the maximum ERDF available for the Caton Road scheme given other regional NW priorities.
- 2.8 Members will recall the ERDF money has a number of time critical aspects imposed by the decision to leave the EU. The Government has advised that ERDF must be contracted by 31 March 2019 and all match funding and planning permissions must be in place before this time. Matching funds will need to be identified and have a high degree of certainty in order for the full application to be approved and for MCHLG to consider issuing an offer letter. In any case, Members will also need similar assurance around the overall funding package before accepting an offer of ERDF money.
- 2.9 Members will recall the scheme is not fully fundable with EA FDGiA as it is designed to protect mainly business rather than residential properties. EA's funding formula for schemes which predominantly benefit businesses is complicated and influenced by specific design and cost matters as the scheme progresses through their detailed appraisal system. The funding formula currently indicates an overall FDGiA allocation of £2.5M is available rather than the £2.6M previously reported to Members in December. 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. As previously noted a further £2M has been approved by the North West Regional Flood and Coastal Committee (RFCC) finance sub group at its meeting on 4 April 2017.
- 2.10 For the purposes of EA budgeting both FDGiA and RFCC funds are considered to be EA controlled/administered funds. To accommodate and

support the EA with its budget constraints for the previous financial year the £200K design development work was subsequently agreed to be funded from an early “design development” application and allocation of GiA funds by the EA rather than the RFCC approved money. Therefore £2.3M GiA funds and £2M RFCC funds currently remain.

2.11 As noted in previous meetings officers have been in individual discussion with the largest businesses and freehold interests on the industrial estates on the basis of securing a significant private sector contribution. Formal requests for support have been made on the basis of an apportionment mechanism related to the Rateable Value of the individual business’s property interests. At the time of writing officers have secured in-principle commitments of £335K.

2.12 The current estimated cost / funding position is summarised below:

Funder	Amount
FDGiA (Environment Agency)	£2.3M*
RFCC Local Levy (Environment Agency)	£2.0M
ERDF Priority 5	£3.1M
Private business “in principle” contribution.	£0.335M
Total (A)	<u>£7.735M</u>
Total funding Required (B)	£9M
Funding shortfall on current cost estimate (B – A)	£1.265M

*Excludes £200K approved and spent on design development activities.

2.13 Officers are exploring the following options to bridge the funding gap:

- A number of businesses with which officers had constructive discussions on in-principle private sector contributions have either yet to formally respond or require further information/time to navigate their internal decision making processes. Around £410K of funding requested is in a “tentative” phase of discussions. Officers will also continue contact and discussions with those businesses that, for various commercial and business reasons, felt unable to commit to a contribution at the current time.
- Electricity North West (ENW) have to undertake reinforcement of their supply in the vicinity of the scheme and are currently costing work involving digging the length of Caton Road to install cables. Council officers are working with ENW to explore potential synergies with the flood prevention scheme and any cost / funding advantages for both parties.
- Officers and the partner contractor will explore more significant reduced cost amendments and options for the scheme over the next period. However, the impact of any significant redesign/amendment on outcomes and protection levels will need to be carefully assessed if the scheme is to generate the threshold impact required to deliver

against the GiA funding and EA objectives

- 2.14 It is difficult to estimate any likely shortfall at the end of this work but Members should note that on the basis of current information there is a high risk of not achieving either sufficient additional private / public funding or the cost savings necessary to bridge the whole funding gap. In these circumstances, it is re-iterated that the council would be unable to proceed with the project.

3.0 Further Work Required

- 3.1 In order to have the best chance of meeting the ERDF funding contracting and planning deadlines, officers have identified the need to undertake further work, starting at the earliest opportunity, on finalising design and developing the target cost and Stage 2 contracting package for the project. It is estimated that this work will cost £532K inclusive of contribution to internal staff time.
- 3.2 EA have advised that this could be taken from the funds approved following submission of the FDGiA business case / benefits financial appraisal (as agreed at December 2017 Cabinet). EA have confirmed there will be no clawback risk arising from spend against this funding should it not prove possible to secure sufficient stakeholder buy-in and/or financing for full scheme implementation as the work undertaken will still provide for a fully developed scheme to be available for implementation should funds become available in the future.
- 3.3 It is expected that this tranche of FDGiA spend will be treated as an eligible cost for ERDF funding purposes. That is, it would be part-funded retrospectively through ERDF should that application be approved and accepted. This means all work and publicity for the project associated with this spend needs to comply with EU ERDF publicity and procurement requirements.
- 3.4 To move the scheme forward the following is therefore required:
- Authority is requested to accept an offer of major FDGiA funding following consideration of the business case/financial appraisal – an indicative total of £2.3M is calculated to be available on the current scheme design.
 - Use up to £532K FDGiA funding to undertake further design development work in support of funding, planning and delivery, subject to there being no clawback for this element should the scheme not progress to full implementation.
 - Officers continue to work with business to secure private funding contributions and explore other public funding contributions or cost saving mechanisms to bridge the funding gap

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:

	Option 1: Do nothing	Option 2: Accept a further £2.3M EA FDGiA and use £532K to undertake further design development work in support of funding, planning and delivery of the Phase 3 Flood Defence Scheme.
Advantages	Officers do not have to undertake further development work on a major capital scheme.	<p>Gives the best chance of a scheme to be ready that secures all statutory, contractual and funding requirements and which meets current deadlines.</p> <p>Continues the process of applying more certainty to scheme costs and deliverability in conjunction with the partner contractor.</p> <p>Allows work on costs and deliverability to support the planning application.</p>
Disadvantages	<p>Without additional resources it is unlikely that officers will be able to develop the package of works in sufficient detail with the partner contractor to allow:</p> <ul style="list-style-type: none"> • a formal contract for the works to be agreed by the end of March 2019. • further investigations and deliverability work to support the planning application and statutory requirements. 	Engages the council and its staff resources in the continuing development of a major capital project.
Risks	<p>Reputational risks of being unable to deliver a contract within the deadlines imposed by ERDF and MCHLG.</p> <p>Reputational risks of missing / delaying delivery and the planning application being refused for lack of information.</p>	Engaging in a more detailed development phase without certainty of the funding package or contractual delivery may raise expectations (although the council is not committed to any construction contract).

6.0 Officer Preferred Option (and comments)

- 6.1 The preferred option is Option 2 to **accept a further £2.3M EA FDGiA and use £532K to undertake further design development work in support of funding, planning and delivery of the Phase 3 Flood Defence Scheme.**
- 6.2 This decision allows the council to progress the detailed design and bring more certainty to deliverability and costs in order to inform planning and statutory requirements and ensure the challenging contracting deadlines have the best prospect of being achieved.
- 6.3 As the council has progressed a phased tender under the WEM framework officers are confident all spend will be ERDF compliant and available to be used as match funding to ERDF grant should this be approved and accepted in future.
- 6.4 While progressing further work does not commit the council to accepting ERDF funds, or progressing a full scheme, more detailed work has to be undertaken for there to be the chance of meeting ERDF contracting and delivery deadlines. Option 2 also allows officer to continue to explore and confirm the appetite of the major businesses to assist with significant financial contributions and continue to investigate other potential public funding sources.

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 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

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 continue to use the project contractor secured through Environment Agency Water and Environment Management framework to secure and undertake the works funded under this additional tranche of EA FDGiA funding which will comply with the Lancaster City Council 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, 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 MCHLCG officers) is to date unproven through independent audit.

There is therefore a possibility, even if remote, that the WEM framework could fail the most stringent ERDF audit procedure and the council could be at risk of clawback given it is intended that these particular design/development costs are treated as "eligible" spend for ERDF purposes.

If there are any changes to the preferred design/build procurement route required for further mitigation of this risk this will be highlighted in a future report.

Financial contributions

In the negotiations with the major Caton Road businesses the private sector contributions highlighted have no formal contractual basis, being currently offered in-principle only. There will be a need to consider the formal contractual mechanism by which the contributions can be formally secured / contracted and paid when required. Legal Services staff have been and will continue to be fully engaged in developing this mechanism.

Other matters

Planning approval and a range of other statutory approvals will be required for the implementation of the scheme.

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 there is no aspect of the infrastructure deemed to offer a selective advantage, is outside the scope of State Aid regulations.

FINANCIAL IMPLICATIONS

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

It is intended to use a proportion of the EA's FDGiA funds which have been indicatively /assessed through the GiA funding calculator but which have to be approved on the basis of a full business case/financial appraisal submission. 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.

That said, to ensure sound stewardship and value for money in using public funds, should Cabinet support the proposal, it should have reasonable confidence that sufficient private sector contributions and/or cost savings can be secured in due course to enable the scheme to go ahead, and that there is a fair chance that any further design work will not prove abortive.

The General Fund Revenue Budget will need to be updated accordingly in 2018/19 to reflect the additional design development expenditure and associated EA grant funding including for around £25K reimbursement for internal costs expected to be incurred by the Council's Engineering team.

The route to securing the remaining funding (to a current cost estimate of £9M which may go up or down) is still very much dependent on the response of the private sector and the major businesses, to provide substantial contributions (i.e. contributions towards the circa £1.2M funding gap), other public funding sources and potential further cost savings.

Therefore, due to the continued uncertainty and risk associated with the total funding package required, it is further re-iterated that 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, the private sector contributions and progressing to full 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

Section 151 Officer has been consulted and has no further comments.

MONITORING OFFICER'S COMMENTS

Monitoring Officer has been consulted and has no further comments.

BACKGROUND PAPERS**Contact Officer:**

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