



ADUR & WORTHING
COUNCILS

Joint Strategic Committee
31 January 2019
Agenda Item 10

Key Decision: Yes

Ward Affected: St Mary's

New Flood Defence for Shoreham Town Centre at Sussex Yacht Club

Report by the Director for the Economy

Executive Summary

1. Purpose

- To update Members on progress with the development of flood defences at Sussex Yacht Club and update on funding.
- To agree a preferred way forward on the purchase of land and funding of the flood defence barrier.

2. Recommendations

- 2.1 Joint Strategic Committee is recommended to resolve that Option 3 in paragraph 5.3 is agreed as the preferred way forward: to authorise the Director for Economy, to purchase, on behalf of Adur District Council, the land (edged in red on the attached plan) from Sussex Yacht Club for £3.365 million, using funding from Coast to Capital Local Enterprise Partnership granted for that purpose, subject to Adur District Council approving recommendation 2.3.
- 2.2 Joint Strategic Committee are recommended to require a report back with an update on the project and to consider funding, procurement and contract issues relating to the flood defence wall within the next 12 months.

2.3 The Joint Strategic Committee is recommended to recommend to Adur District Council that:

- i) The budget for the scheme be increased by £215,000 to accommodate a contingency sum for the coastal defences works;
- ii) Approve prudential borrowing of £778,070 to part fund the coastal defence works, in the event that full funding for the flood defences is not secured from other sources, with the remainder of the funding being provided by the Environment Agency,

3. Background

- 3.1. Shoreham Town Centre has experienced a number of flooding events in recent years which is affecting investment and growth, and delaying progress on delivering development along the Western Harbour Arm regeneration area. The key weakness in flood defences is at the Sussex Yacht Club site (The Site).
- 3.2. The majority of flood defences will be provided by private sector investment in line with Adur District Council's adopted Flood Risk Management Guide Supplementary Planning Document 2015. Sussex Yacht Club as a members club is unlikely to have a commercial incentive to develop flood defences.
- 3.3. Adur District Council is working in partnership with Sussex Yacht Club to deliver a new flood defence wall along the northern boundary of the site. At the meeting of the Joint Strategic Committee in January 2017 it was agreed for Officer's to enter into negotiations for the purchase of the land required on which to build the flood defence, for them to appoint any necessary consultant and to submit a planning application for the flood defence, and to enter into contracts for the construction of the flood defence wall. The authority was given, subject to financial provisions that the full cost of the scheme was covered by grant funding from Coast to Capital Local Enterprise Partnership and the Environment Agency. Head of Terms were agreed by Members at a meeting of the Joint Strategic Committee in June 2018.
- 3.4. Funding has been identified from the Coast to Capital Local Enterprise Partnership (LEP) of £3.5m which through the funding agreement is

required to be spent on the purchase of the land and needs to be spent by April 2022 at the latest in line with the terms of the Government's Local Growth Fund Round 2. The terms of the Coast to Capital funding agreement with Adur District Council includes a requirement to deliver agreed outputs which include the delivery of the flood barrier, cycleway and footpath, should all of these outputs not be delivered by the end of the funding period, Coast to Capital may require the funding to be repaid. The Environment Agency had indicated that they would provide funding of up to 1.2 million pounds for the construction of the flood barrier following the submission of a business case.

4. Previous Resolutions by Joint Strategic Committee

- 4.1 Joint Strategic Committee previously considered the project in January 2017 and agreed a way forward based on the scheme being fully grant funded from the Environment Agency and Coast to Capital Local Enterprise Partnership. The following recommendation 6.1 was agreed:

The Director for Economy, in consultation with the Executive Member for Regeneration, be authorised to make the necessary professional consultancy appointments to negotiate both the purchase of the yellow land shown on the Plan by way of an unconditional sale contract and the land shown coloured green on the Plan by way of a contract conditional on the Yacht Club being able to obtain planning permission for the construction of the replacement clubhouse from Sussex Yacht Club subject to all costs associated with the project not exceeding the funding drawn down from the Coast to Capital LEP and Environment Agency.

- 4.2 An update on progress was presented to the June 2018 Joint Strategic Committee through which Members noted the agreed Heads of Terms for purchase of the land from Sussex Yacht Club which included the agreed purchase price for the land £3,300,000. The Heads of Terms removed the distinction between the land shown in yellow and land shown in green from the January 2017 report to committee, and the agreement was to purchase all of the land required in one transaction. A plan of the land to be purchased is shown in Appendix 1 below.
- 4.3 The resolution from January 2017 included the proviso that "all costs associated with the project not exceeding the funding drawn down from the Coast to Capital LEP and Environment Agency". Since this time, further detailed work has been undertaken on the cost of construction

of the flood defence wall which has increased from original estimates due to ground conditions and the need for substantially wide flood gates to accommodate the continuing operation of the Yacht Club. A business case has also been submitted to the Environment Agency, and initial indications are that only £661,931 will be forthcoming instead of the full £1,200,000 allocated in their capital budget. More refined estimates of the cost of the flood barrier indicate that the cost of construction will also exceed £1,200,000, but this cannot be confirmed until tenders have been received. Furthermore, the Environment Agency have confirmed that their grant allocation will be dependent on the full costs of the scheme being secured by Adur District Council.

- 4.4 It is now clear that while all the funding is in place for the purchase of the land using the Local Enterprise Partnership grant, the funding available from the Environment Agency will not cover the full cost of the development of the flood defence wall. This is contrary to the resolution of the Committee in January 2017 and therefore Officers cannot proceed to purchase the land without a further resolution from the Joint Strategic Committee, and approval from Council of the shortfall in funding from prudential borrowing.
- 4.5 Officers have begun to identify other sources of funding to cover the cost of the wall including securing funding from the Shoreham Harbour Regeneration Partnership, West Sussex Business Rates Pool, or applications for any other grant under-spends from Coast to Capital or the Environment Agency. Should a funding gap remain at the time the works are due to be commissioned (anticipated to be autumn 2020), the Council could prudentially borrow (subject to Member approval) to cover any remaining funding gap.
- 4.6 It is considered that the acquisition of the land is the key element that allows the development of the flood defence by the Council. Officers consider that a pragmatic way to continue is to purchase the land using Local Enterprise Partnerships funding (which would have to be returned should we choose not to proceed), and work to secure additional funding as set out in paragraph 4.5 above while Sussex Yacht Club do the initial stages of the project to develop their new club house. A further report will be brought to Members of the Joint Strategic Committee outlining the funding situation and seeking authority to proceed, prior to procuring and awarding a Contract to outline the final funding of the flood defence barrier. A risk would remain that any funding gap could not be bridged, and the flood barrier would not be

delivered even though the land had been purchased; in such circumstances the Local Enterprise Partnership could require repayment of their funding. To prevent this authority is sought from the Council, to cover the funding gap, by way of borrowing, should that be necessary.

5. Options Considered

- 5.1 Option 1: To not continue with the project. This would result in the Council having to return £3.5m of funding to the Coast to Capital Local Enterprise Partnership and would not prevent flooding from happening in Shoreham Town Centre. This is not the recommended option.
- 5.2 Option 2: To wait until all funding has been secured for the flood barrier works before purchasing the land from Sussex Yacht Club. This is likely to result in Sussex Yacht Club losing the confidence in Adur District Council as a partner and could withdraw from the agreement to sell the Council the land. Furthermore, the delay could result in the Coast to Capital Local Enterprise Partnership withdrawing the £3.5m funding for the scheme as there would be no clear indication that the flood defence infrastructure would be delivered within the funding period (ending 2022). This is not the recommended option.
- 5.3 Option 3: To continue with the purchase of the land from Sussex Yacht Club for the flood defence infrastructure using the £3.5m grant from Coast to Capital without the full funding being in place for the flood defence works. For Officers to continue to source additional grant funding for the construction of the flood defence wall. Should grant funding not be secured for the full amount, that Adur District Council would prudentially borrow (subject to full Council approval) to cover the funding gap subject to a report to Joint Strategic Committee prior to any procurement when more detailed costs are known. This option will allow the infrastructure project to proceed, and enable the Council to purchase the land which is critical to the projects success. If Council approve the funding as set out in recommendation 2.3 above, this would eliminate the risk of funding for the flood barrier not being secured, and the LEP requesting their grant funding to be returned. This is the recommended option.

6. Financial Implications

- 6.1 The overall cost of the scheme is expected to be as follows:

	£'000
Flood alleviation study	85
Preliminary fees	90
Purchase of land	3,300
Flood defence works	1,200
Contingency on flood defence works	240
Total scheme costs	4,915
Current approved budget	4,700
Budget shortfall	215

- 6.2 It was expected that the EA would fund the entirety of the flood defence works. However, a maximum amount of funding of £661,930 has been indicated. Unless the Council can identify alternative funding, the Council will have to fund the shortfall through prudential borrowing of £778,070 otherwise the scheme will be unable to proceed. This will add to the Council's financial pressures from 2021/22 onwards by £33,670 per annum.
- 6.3 If no funding is forthcoming from the EA, then the Council would have to fund the whole of the flood defence scheme (£1.44m) at a potential additional cost of £62,300 per annum.

7. Legal Implications

- 7.1. s1 of the Localism Act 2011 empowers the Council to do anything an individual can do apart from that which is specifically prohibited by pre-existing legislation.
- 7.2. The District Council of Adur is a Coast Protection Authority under Section 1 of the Coast Protection Act, 1949.
- 7.3. s120 Local Government Act 1972, provides that principal Councils may acquire by agreement any land for the purpose of their functions or the improvement of their areas for money or money's worth as a purchaser or lessee.

- 7.4. Land purchases are not generally service or works contracts as defined by the Public Contract Regulations 2015 and therefore fall outside the scope of the procurement regulations.
- 7.5. When entering into a contract for the purchase of Land the Council must have regard to its Contract Standing Orders and any constitutional issues arising from the value of the Contract and that it will constitute a Key Decision.
- 7.6. Further contracts arising under this project; the demolition of the existing yacht club and the building of the flood defence wall and footpath; will be public works contracts and subject to the Public Contract Procurement Regulations.
- 7.7. Any expenditure of grant funding must be in accordance with the Grant Funding Terms and Conditions or approved by the Grantor. The terms of the Coast to Capital funding agreement with Adur District Council includes a requirement to deliver agreed outputs which include the delivery of the flood barrier, cycleway and footpath. There is no certainty at this time that the Council will have secured sufficient funding to deliver the outputs and there is a risk that if they are unable to do so by the end of the funding period, Coast to Capital may require the funding to be repaid.
- 7.8. Joint Strategic Committee are asked to recommend to full Council the approval of prudential borrowing should additional grant funding not be secured to complete the flood defense barrier. No purchase of the Sussex Yacht Club should take place until such approval has been given by Adur District Council.
- 7.9. Section 9 of the Local Authorities (Executive Arrangements)(Meetings and Access to Information)(England) Regulations 2012 and the Adur District Council Executive Procedure Rules provide that at least 28 clear days before a key decision is made a document must be made available to the public which states that a key decision is to be made, the matter in respect of which the decision is to be made, the decision-making body, the date on which the decision is to be made, and the procedure for requesting details of relevant documents (the Forward Plan). The decision to purchase the Sussex Yacht Club is key as defined by the Local Authorities (Executive Arrangements)(Access to Information)(England) Regulations 2000, due to the significant expenditure. The required statutory notice has not been given of this

key decision. As it is impracticable to defer this decision until 28 clear days notice has been given, the general exception provisions have been applied, and the Director for Communities has, in writing, informed the Chairmen of the Joint Overview and Scrutiny Committee, by Notice, of the matter to which the decision is to be made, and has made that Notice available to the public for at least 5 clear days prior to the decision being made.

Background Papers

- Joint Strategic Committee 5th June 2018 Agenda Item 7- Sussex Yacht Club.
- Joint Strategic Committee 10th January 2017 Agenda Item 11 - Flood Defences at Sussex yacht Club.
- Joint Strategic Committee 7th July 2015 Agenda Item 12 - Shoreham Harbour - Flood Defence Project for Sussex Yacht Club and Kingston Beach, Western Harbour Arm.

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Sustainability & Risk Assessment

1. Economic

The project will deliver significant economic benefits through the protection of Shoreham Town Centre and the A259 from flooding incidents and will create a number of direct and indirect economic benefits through the construction process. A full economic impact assessment is being undertaken as part of the work being undertaken by Mott MacDonald at present.

2. Social

2.1 Social Value

The project outlined in the above report will have a positive impact on our local communities by improving local flood, cycle and pedestrian infrastructure.

2.2 Equality Issues

Matter considered and no issues identified.

2.3 Community Safety Issues (Section 17)

Matter considered and no issues identified.

2.4 Human Rights Issues

The development would protect homes and businesses and therefore would not impinge on anyone's human rights. The proposals, in any event, would require planning permission and due consideration will be given to all the consultation responses received.

3. Environmental

It is not anticipated that any aspect of the scheme will have a deleterious effect on Adur District's environment or habitats. The environmental and ecological effects of the scheme will be fully considered through the planning application.

4. Governance

The developments outlined within this report are aligned to the Council's priorities contained within the Our Financial Economies platform.

Shoreham Flood Defence Wall

23 October 2018



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