



ADUR & WORTHING  
COUNCILS

Joint Strategic Committee  
2 April 2019  
Agenda Item 6

Key Decision [No]

Ward(s) Affected:

## **Brighton Marina to River Adur Coastal Protection Scheme**

### **Report by the Director for Digital and Resources**

#### **Executive Summary**

##### **1. Purpose**

- 1.1 This report provides an update to Members on the progress made in respect to the Brighton Marina to River Adur Coastal Protection scheme and seeks delegated authority and agreement to proceed with the further development of the project by entering into a Memorandum of Understanding with other partner authorities.

##### **2. Recommendations**

2.1 The Joint Strategic Committee is recommended to:

- i) Delegate to the Director for Digital and Resources, in consultation with the Solicitor to the Council, the authority to review, approve and sign a Memorandum of Understanding with other partner authorities; and
- ii) Note that a further report will be presented to the Joint Strategic Committee outlining the full financial implications of the scheme and detailing the contribution required by Adur District Council.

### **3. Background**

- 3.1. In 2014 a formal coastal defence strategy for Brighton Marina to River Adur Flood and Coastal Erosion Risk Management was approved by Brighton & Hove City Council (BHCC) as the lead authority, Adur District Council (ADC), Shoreham Port Authority (SPA) and the Environment Agency (EA). This strategy set out in broad terms how the coast defences could be improved and maintained in an effective condition for the next 100 years for open coastal frontage between Shoreham Port and Brighton Marina.
- 3.2. Since the acceptance of this strategy BHCC, ADC and SPA have been working in partnership with the EA and appointed consulting engineers to produce an Outline Business Case (OBC) to review and update the preferred option identified in the Strategy (a fully integrated 15-year detailed programme of work for individual frontages), to promote a scheme to reduce flood risk to people and property (both residential and commercial) and secure some Flood and Coastal Erosion Risk Management (FCERM) Grant in Aid (GiA) funding from the Secretary of State. BHCC and ADC's overall objective is defined as "to defend the frontage from erosion and encroachment from the sea as outlined in the Coastal Protection Act 1949 in order to protect people, property, the environment and the local economy."

### **4 Current Situation**

- 4.1 Within the OBC document it highlights that Under a No Active Intervention scenario it is predicted that 13 residential and 105 commercial properties would be lost to erosion within the first 20 years including Shoreham Sewage Pumping Station (serving 60,000 population equivalent from Shoreham and Portslade) and Shoreham Power Station (420 mW, sufficient to power 250,000 homes). This increases to 260 residential and 248 commercial properties by Year 100, including the loss of the majority of businesses and land forming Shoreham Port and sections of the A259.
- 4.2 The OBC's option is consistent with the Shoreline Management Plan (SMP2) and the 2014 Strategy preferred option. The proposal will take into account long term climate change predictions to sea level rise reduce erosion and wave overtopping providing a 1:200 year Standard of protection (SoP). Covering an open coastal frontage of approximately 10km of which 2.15 km is within ADC's administrative boundary.

- 4.3 The proposed option covers maintenance and replacement groynes and defences as required. Beach monitoring and maintenance including allowance for recycling of 5,000 m<sup>3</sup>/year of shingle to feed Shoreham and Brighton beaches sourced from Kemp Town beaches. With predicted sea level rise, flood risk will increase over time. Biennial bypassing and recycling of 32,000 m<sup>3</sup> and 10,000 m<sup>3</sup>, respectively under year 10 reducing to 32,000 m<sup>3</sup> in total thereafter, of shingle to feed Shoreham and Brighton beaches sourced from west of the Adur river mouth and Kemp Town beaches. New assets are required to address flood risk, along the Southwick frontage new assets are also required to address erosion risk problems with potential release of contaminated material, for example, at the lorry park to the west of Western Villas.
- 4.4 The submission of the OBC to the EA's Large Project Review Group (LPRG) is dependent on the governance and assurance arrangements being in place in the form of a Memorandum of Understanding (MoU) to support this project.
- 4.5 The MoU is a non –legally binding document that promotes the continued partnership to deliver the scheme. It will outline and confirm the intentions of all parties to progress with the OBC
- 4.6 The OBC outlines the Strategic, Financial, Economic, Commercial and Management justification for undertaking the project.

## **5. Engagement and Communication**

- 5.1 Legal Officers have been consulted on the draft MoU and responses have been sent to BHCC for finalising the document. A copy of the draft MOU is attached as Appendix A
- 5.2 An Executive Board has been established and comprises of senior representatives from the partner organisations to enable the agreement of financial, legal and political issues.
- 5.3 BHCC as lead authority will be engaging with residents, local groups, stakeholders and statutory consultees. ADC will also engage with the local community, residents and businesses where any construction work may cause significant disruption to the local area.

## 6. Financial Implications

- 6.1 The MoU does not commit Adur District Council to any financial contributions. The final costings provided in the OBC will provide an indication of partnership funding required to meet any shortfall in grant towards the cost of the project.
- 6.2 The preliminary estimates of the scheme cost was £24.8m. The contributions needed from the partners were £16.8m which were split as follows:

Adur - £1.2m  
Shoreham Port Authority - £10.7m  
Brighton and Hove CC - £4.7m

Based on the current funding formula the scheme would be eligible for overall grant of around £8m from the EA. These costs are currently being reviewed and early indications are that they may increase substantially to around £36m with potential grant funding of £12.7m.

- 6.3 This leaves a considerable shortfall. However, no funding from the bodies is likely to be needed until 2024/25 at the earliest by which time by which time the partners will have had the opportunity to identify potential other funding sources such as the use of the Housing Infrastructure Fund, Regional Growth Funding and other options. BHCC are leading on bidding for additional external funding. There also remains an option to reduce the scheme to meet the funding available from the various bodies although this will reduce the effectiveness of the scheme.
- 6.4 Once there is certainty about the costs and the Council's likely contribution to the scheme, a further report will be presented to Members detailing the financial scheme cost, funding from the EA, contributions required from each of the partners. Approval of this report will commit the Council financially to the project.
- 6.5 In the interim period a legal agreement will be drafted by BHCC for consideration and signing by all parties, committing them to partnership funding contributions this will enable GiA funding to be drawn down to progress with the detailed design and construction of the scheme.

## **7. Legal Implications**

- 7.1 ADC is a Coast Protection Authority (CPA) under Section 1 of the Coast Protection Act 1949. By Section 2A of that Act a Coast Protection Authority is also a Coastal Erosion Risk Management Authority.
- 7.2 By Section 4 of the Coast Protection Act 1949, a CPA shall have the power to carry out such coast protection work whether within or outside of its area, as may appear to the CPA necessary or expedient for the protection of any land in its area providing that; (a) the work is desirable having regard to the national flood and coastal erosion risk management strategies; and (b) the purpose of the work is to manage coastal erosion risk within the meaning of Part 1 of the Flood and Water Management Act 2010.
- 7.3 Legal officers in conjunction with the Head of Facilities & Technical Services and the Chief Financial Officer will need to consider entering into a formal legal agreement to facilitate partners' contributions. This agreement is required to enable the OBC to be submitted to the EA for approval of GiA Funding

## **Background Papers**

JOSC 2<sup>nd</sup> Sept. 2014 - Adoption of the Brighton Marina to River Adur Flood and Coastal Erosion Risk Management Strategy Review.

Brighton Marina to River Adur Flood and Coastal Erosion Risk Management Strategy, 24<sup>th</sup> June 2013

*Urgent Coast Protection Scheme - Southwick beach 17<sup>th</sup> July 2014*  
*JSC 6<sup>th</sup> May 2014 Coast Protection Schemes – Worthing Beach Management Plan, Adur Kingston Beach Groyne Repair/Replacement and Revetment Repairs*

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## **Sustainability & Risk Assessment**

Sustainability matters were considered as part of the development of the Strategy and SMP but will again be considered again as part of the development of these schemes.

The proper management of the coastline is essential and the programme of works for the 100 year period of the study will maintain the standard of defence keeping pace with current climate change predictions.

Adur District Council is the Operating Authority for significant parts of this coastline and has certain duties and permissive responsibilities under the Coast Protection Act 1949 and 1991 Land Drainage acts. The 2014 Strategy contains a more detailed risk assessment of the assets across the whole frontage. A loss of life and property risk assessment will be incorporated within the proposed option.

### **1. Economic**

The 2014 Strategy preferred option was developed for outline design taking into account the newly available information and taking consideration of technical viability, buildability, sustainability, access restrictions and health and safety. The option was considered over an appraisal of 100 years. A detailed costing exercise was undertaken to develop costs for the option based on these outline designs using Early Supplier Engagement (ESE).

### **2. Social**

#### **2.1 Social Value**

Engagement, with the local community, will also be necessary to inform residents and businesses of key activities being planned where any construction work may cause significant disruption to the local area.

#### **2.2 Equality Issues**

Matter considered but no issues identified

#### **2.3 Community Safety Issues (Section 17)**

Matter considered but no issues identified

#### **2.4 Human Rights Issues**

Failure to protect property could be construed as interfering with the right to quiet enjoyment of property and possessions.

### **3. Environmental**

The Project Steering Group work in partnership to guide the development of technically, economically and environmentally sustainable coastal flood and erosion risk defences along the coastline from Brighton Marina to the River Adur.

### **4. Governance**

The scheme is being led by Brighton and Hove City Council in their capacity as Risk Management Authority under the Coast Protection Act 1949 and 1991 Land Drainage acts. The scheme will be managed in accordance with PRINCE2. Following

PRINCE2 principles a project board and steering group has been running since the start of the scheme.

**Appendix A**

**DATED – 4<sup>TH</sup> FEBRUARY  
2019**

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**MEMORANDUM OF UNDERSTANDING**

**RELATING TO THE BRIGHTON MARINA TO RIVER ADUR**

**COAST PROTECTION  
SCHEME**

**BRIGHTON AND HOVE CITY COUNCIL (1)**

**ADUR DISTRICT COUNCIL (2)**

**SHOREHAM PORT AUTHORITY (3)**

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### PARTIES

(1) Brighton and Hove City Council of Hove Town Hall, Norton Road, Hove, BN3 3BQ

UK ('**BHCC**').

(2) Adur District Council of the Town Hall, Chapel Road, Worthing, West Sussex, BN11

1HA ('**ADC**').

(3) Shoreham Port Authority of Nautilus House, 90-100 Albion Street, Brighton, West Sussex, BN42 4ED, United Kingdom ('**SPA**').



## **1. BACKGROUND**

1.1 BHCC, ADC and SPA have agreed to work together on the project detailed in Annex A (**Project**).

1.2 The parties wish to record the basis on which they will collaborate with each other on the Project. This Memorandum of Understanding (**MoU**) sets out:

- (a) the key objectives of the Project;
- (b) the principles of collaboration;
- (c) the governance structures the parties will put in place; and
- (d) the respective roles and responsibilities the parties will have during the Project.

## **2. KEY OBJECTIVES FOR THE PROJECT**

2.1 The parties shall undertake the Project to achieve the key objectives set out in Annex A to this MoU (**Key Objectives**).

2.2 The parties acknowledge that the current position with regard to the Project and the contributions already made (financial and otherwise) are as detailed in Annex A to this MoU.

## **3. PRINCIPLES OF COLLABORATION**

The parties agree to adopt the following principles when carrying out the Project (**Principles**):

- (a) collaborate and co-operate. Establish and adhere to the governance structure set out in this MoU to ensure that activities are delivered and actions taken as required;
- (b) be accountable. Take on, manage and account to each other for performance of the respective roles and responsibilities set out in this MoU;
- (c) be open. Communicate openly about major concerns, issues or opportunities relating to the Project;

(d) learn, develop and seek to achieve full potential. Share information, experience, materials and skills to learn from each other and develop effective working practices, work collaboratively to identify solutions, eliminate duplication of effort, mitigate risk and reduce cost;

(e) adopt a positive outlook. Behave in a positive, proactive manner;

(f) adhere to statutory requirements and best practice. Comply with applicable laws and standards including EU procurement rules, data protection and freedom of information legislation. In particular the parties agree to comply with the requirements of the Information Sharing Protocol attached to this MoU in Annex B;

(g) act in a timely manner. Recognise the time-critical nature of the Project and respond accordingly to requests for support;

(h) manage stakeholders effectively;

(i) deploy appropriate resources. Ensure sufficient and appropriately qualified resources are available and authorised to fulfil the responsibilities set out in this MoU; and

(j) act in good faith to support achievement of the Key Objectives and compliance with these Principles.

#### **4. PROJECT GOVERNANCE**

##### **4.1 Overview**

The governance structure defined below provides a structure for the development and delivery of the Project.

##### **4.2 Guiding principles**

The following guiding principles are agreed. The Project's governance will:

(a) provide strategic oversight and direction;

(b) be based on clearly defined roles and responsibilities at organisation, group and, where necessary, individual level;

(c) align decision-making authority with the criticality of the decisions required;

(d) be aligned with Project scope and each Project stage (and may therefore require changes over time);

(e) engage with and influence existing organisational, groups and users;

(f) provide coherent, timely and efficient decision-making; and

(g) correspond with the key features of the Project governance arrangements set out in this MoU.

#### 4.3 **Executive Board**

(a) The **Executive Board** provides overall strategic oversight and direction to the Project, and is the ultimate decision making body. The Board will also provide advice and be expert in the legal and financial issues that affect the project. This group will consist of senior managers from:

Brighton and Hove City Council: Mark Prior – Assistant Director – City Transport

Adur District Council: [INSERT DETAILS]

Shoreham Port Authority: [INSERT DETAILS]

Environment Agency: [INSERT DETAILS]

(b) The Executive Board shall operate in accordance with the terms of reference

set out in Annex C to this Memorandum of Understanding ('MoU').

#### 4.4 **Project board**

(a) The Project Board will provide strategic management at Project and work stream level. It will provide assurance to the Executive Board that the Key Objectives are being met and that the Project is performing within the boundaries set by the Executive Board.

(b) The Project Board consists of representatives from each of the parties. The Project Board shall have responsibility for the creation and execution of a project plan and deliverables, and therefore it can draw technical, commercial, legal and communications resources as appropriate into the Project Board. The core Project Board members (or their nominated replacements or substitutes) are:

Brighton and Hove City Council: Martin Eade & Alistair Booton who will attend meetings accompanied by an advisor if required.

Adur District Council: Derek Magee who will attend meetings accompanied by an advisor if required.

Shoreham Port Authority: Tony Parker who will attend meetings accompanied by an advisor if required.

From time to time a representative from the Environment Agency may ask or be asked to attend to discuss or be acquainted with particular aspects of the Project.

The Project Board shall meet as requested by any of the parties or as suggested by the Project Manager.

#### 4.5 Reporting

Project reporting shall be undertaken at three levels:

(a) **Executive Board:** Minutes and actions will be recorded for Board meeting. Any additional reporting requirement shall be at the discretion of the Executive Board. As project manager BHCC will chair the meetings. The Board will only meet when asked to by the Project Board or by any member of the Executive Board.

(b) **Project Board:** Reporting shall be on a regular basis as agreed between the parties, generally once per month during the construction period or as requested by the project manager, and as required, agreed or requested by the parties at other time, highlighting : progress this period; issues being managed; any issues requiring a decision by the Executive Board and progress planned next period. As project manager BHCC will chair the meetings

(c) **Organisational:** the Project Board members shall be responsible for drafting reports into their respective organisations as required by the Executive Board.

### 5. ROLES AND RESPONSIBILITIES

5.1 The parties shall undertake the following roles and responsibilities to deliver the

5.2

Activity	Brighton and Hove City Council	Adur District Council	Shoreham Port Authority
Overall project management	Lead	Assure	Assure
Secure local approval to the OBC and their financial	Lead	Lead	Lead

contribution			
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Other activities can be added at the discretion of the Project or Executive boards.

5.3 For the purpose of the table above:

**Lead:** the party that has principal responsibility for undertaking the particular task, and that will be authorised to determine how to undertake the task on a day to day basis. The Lead must act in compliance with the Objectives and Principles at all times, and consult with the other parties in advance if they are identified as having a role to Assure the relevant activity.

**Assure:** the party that will defer to the Lead on a particular task, but will have the opportunity to review and provide input to the Lead before they take a final decision on any activity. All assurance must be provided in a timely manner. Any derogations raised must be limited to raising issues that relate to specific needs that have not been adequately addressed by the Lead and/or concerns regarding compliance with the Key Objectives and Principles.

5.4 Within 3 months of the date of this MoU the party with the lead role for any aspect of the Project may be required to develop a delivery plan for that part of the Project which shall identify some or all of the following:

- (a) the key milestones for the delivery of the Key Objectives;
- (b) what employees (other than employees identified in this MoU) will be required to work on the project;
- (c) whether any staff will need to be seconded from one party to the other;
- (d) what staff will require access to the premises of the other parties;
- (e) The aim is to implement phase 1 of the Brighton Marina to River Adur Flood and Coastal Erosion Risk Management Strategy 2014 and as detailed in the 2018 Outline Business Case ('OBC').

Each delivery plan must be approved by the Project Board prior to being implemented.

## 6. ESCALATION

6.1 If any party has any issues, concerns or complaints about the Project, or any matter in this MoU, that party shall notify the other parties and the parties shall then seek to resolve the issue by a process of consultation. If the issue cannot be resolved within a reasonable period of time, the matter shall be escalated to

the Project Board, which shall decide on the appropriate course of action to take. If the matter cannot be resolved by the Project Board within fourteen days, the matter may be escalated to the Executive Board for resolution.

- 6.2 If any party receives any formal inquiry, complaint, claim or threat of action from a third party (including, but not limited to, claims made by a supplier or requests for information made under the Freedom of Information Act 2000) in relation to the Project, the matter shall be promptly referred to the Project Board (or its nominated representatives). No action shall be taken in response to any such inquiry, complaint, claim or action, to the extent that such response would adversely affect the Project, without the prior approval of the Project Board (or its nominated representatives).

## **7. INTELLECTUAL PROPERTY**

- 7.1 The parties intend that any intellectual property rights created in the course of the Project shall vest in the party whose employee created them (or in the case of any intellectual property rights created jointly by employees of both parties in the party that is lead party noted in clause 5 above for the part of the project that the intellectual property right relates to).
- 7.2 Where any intellectual property right vests in any of the parties in accordance with the intention set out in clause 7.1 above, that party shall grant an irrevocable licence to the other parties to use that intellectual property for the purposes of the Project

## **8. TERM AND TERMINATION**

- 8.1 This MoU shall commence on the date of the last party's signature (the start date) and shall expire:-
- (a) when the Final Statement of Account is submitted to the Environment Agency; or
  - (b) upon any party giving not less than 3 months' notice in writing to the other Parties to this MOU.

## **9. VARIATION**

This MoU, including the Annexes, may only be varied by written agreement of the Executive Board.

## **10. CHARGES AND LIABILITIES**

- 10.1 Except as otherwise provided, the parties shall each bear their own costs and expenses incurred in complying with their obligations under this MoU.
- 10.2 Subject to Member approval and available budget, the parties agree to share the costs and expenses arising in respect of the Project between them in accordance with a Contributions Schedule to be developed by the Project Board and approved by the Executive Board within three months of the start date of this MoU.
- 10.3 All parties shall remain liable for any losses or liabilities incurred due to their own or their employee's actions and none of the parties intends that the other parties shall be liable for any loss it suffers as a result of this MoU.

**11. STATUS**

- 11.1 This MoU is not intended to be legally binding, and no legal obligations or legal rights shall arise between the parties from this MoU. The parties enter into the MoU intending to honour all their obligations.
- 11.2 Nothing in this MoU is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitutes any of the parties as the agent of the other parties, nor authorise any of the parties to make or enter into any commitments for or on behalf of any of the other parties.

**12. GOVERNING LAW AND JURISDICTION**

This MoU shall be governed by and construed in accordance with English law and, without affecting the escalation procedure set out in clause 6, each party agrees to submit to the exclusive jurisdiction of the courts of England and Wales.

Signed by Mark Prior for and on behalf of Brighton and Hove City Council .....  
 Director

Signed by [NAME OF DIRECTOR] for and on behalf of Adur District Council .....  
 Director

Signed by [NAME OF DIRECTOR] for an on behalf of Shoreham Port .....  
 Director

Authority

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