

	REPORT TO CABINET TO BE HELD ON 12 FEBRUARY 2019
	Key Decision YES Forward Plan Ref No
Corporate Priority: People Place	Cabinet Portfolio Holder Cllr M Cockerill – Portfolio Holder for Major Projects

REPORT OF: CHIEF EXECUTIVE – 19/042

WARDS AFFECTED: STREONSHALH

SUBJECT: CHURCH STREET FLOOD ALLEVIATION SCHEME

RECOMMENDATION (S):

The Cabinet is recommended to:

1. Delegate authority to the Director (LD) in consultation with the Portfolio Holder for Corporate Investment to negotiate and conclude the necessary access agreements with relevant third parties to obtain access to their land to construct the Church Street Flood Alleviation Scheme.
2. Subject to the conclusion of recommendation 1, approve the appointment of Esh Construction Limited as contractor for the scheme and delegate authority to the Director (LD) in consultation with the Portfolio Holder for Major Projects to enter into contract to construct the works.
3. Agree to accept the transfer of ownership from North Yorkshire County Council (NYCC) of the land on which the new flood defence wall will be built which will include responsibility for the on-going maintenance of the full length of the wall.
4. Delegate authority to the Director (LD) in consultation with the Portfolio Holder for Corporate Investment to negotiate and conclude an agreement with NYCC to transfer the ownership of the land on which the new flood defence wall will be constructed to Scarborough Borough Council.
5. Approve the visual aspects of the wall as per the photomontage in Appendix B

which is also proposed to include a cast in wave feature, to be approved by the Portfolio Holder for Major Projects, and subject to final approval of the Local Planning Authority.

REASON FOR RECOMMENDATION (S):

- To manage the risks to people and the developed, natural and historic environments from sea flooding, to the standard of a 1 in 100 year event.
- To provide increased protection to 62 properties from sea flooding; which includes 54 residential properties and 8 commercial properties.
- In order to design and construct necessary improvement works for essential upgrading of Whitby Harbour Assets.
- To comply with Defra's and the Environment Agency's best practice on coastal flood management, including taking into account contemporary guidance, studies and monitoring data.

HIGHLIGHTED RISKS:

- Failure to agree land transfer and maintenance arrangements with NYCC.
- Delays in obtaining access to third parties property to construct the works.
- Programme delays and cost increases due to compensation events in the construction contract.
- Interfaces with Yorkshire Water emergency works which will be ongoing concurrently within Church Street car park.

1. INTRODUCTION

- 1.1 At its meeting on 20 January 2015, Cabinet accepted external funding of £918k and allocated £61k for the underwriting of contingencies from Council resources. These funds provided a budget to construct a flood alleviation project at Church Street in Whitby to improve the standard of protection for both residential and commercial properties.
- 1.2 Cabinet approved a revised budget of £2,094k at its meeting on 13 November 2018 (addendum to report 18/266 refers).
- 1.3 In January 2015 Cabinet also approved the procurement of a specialist consultant from the YORconsult Framework to undertake the project management, procurement, supervision and Principal Designer role for the scheme.
- 1.4 At the same meeting Cabinet also approved the procurement of a suitably experienced contractor to build the scheme.

2. CORPORATE AIMS

- 2.1 Constructing the flood defence wall supports the Corporate Priorities of making people feel safe and healthy and protecting and improving the environment.

3. BACKGROUND AND ISSUES

- 3.1 In 2016 the Council appointed Mott MacDonald as its consultant to design and project manage the project.
- 3.2 The design of a concrete wall was completed and submitted for planning consent and at its meeting in September 2018 planning permission for the scheme was granted.

4. CONSULTATION

- 4.1 A statutory consultation took place during the planning application.
- 4.2 A voluntary public consultation was undertaken in October 2018 to present the scheme to the Whitby public prior to construction with over 100 people attending. The majority of the feedback was positive.
- 4.3 Ward members will be consulted on the final finish of the flood defence wall.

5. ASSESSMENT

Costs and funding

- 5.1 As the design has developed, the costs of the scheme have increased, particularly due to issues requiring additional surveys, services diversions, contaminated land, and inflation since the PAR in 2014.
- 5.2 The total cost of the scheme is now £2,094k.
- 5.3 To mitigate the impact of the cost increase, the Council has applied for and been successful in securing a grant from the Local Enterprise Partnership of £1.1m. A contribution of £15k has also been made by NYCC which means that the scheme is now fully funded. Cabinet accepted the Local Enterprise Partnership funding and NYCC contribution in the most recent quarterly monitoring report to Cabinet in November 2018 (18/266).
- 5.4 Following the completion of the design, tender documents were prepared by the consultant and a mini-competition was held between all of the contractors on Lot 2 of the YORcivil2 Civil Engineering Framework.

Land transactions

- 5.5 The project includes construction of a new flood defence wall on land owned by a number of third parties. The Council proposes to enter in to access agreements with these land owners to allow it to construct the works.
- 5.6 It is recommended that the Leader delegates authority to the Director (LD) in consultation with the Portfolio Holder for Corporate Investment to conclude the terms of the access arrangements and enter into the respective agreements.
- 5.7 A large majority of the land the wall is to be constructed on is owned by North Yorkshire County Council. Whilst NYCC are the Lead Local Flood Authority, they are not responsible for sea flooding and therefore advise this is not a scheme that offers direct benefit to NYCC in terms of either the duties they are required to undertake or the performance of the assets it holds. Notwithstanding this, it is agreed that the project does have wider benefits to the viability of the location going into the future and the community both our authorities represent. NYCC has therefore confirmed in principle that it would be willing to transfer ownership of the land on which the new flood protection wall is to be constructed to the Council at nil cost. The Council would then become liable for the maintenance of the wall. Maintenance cost is expected to be incurred in the later years of the 100 year life span of the wall.
- 5.8 It has also become clear that the bridges giving access to the marina pontoons are constructed on NYCC owned land and this process has demonstrated that land ownership in this location has been uncertain. Going forward NYCC are now seeking to resolve all other ownership issues relating to the area by transferring ownership and maintenance responsibility to SBC and will in return forego any right to income from the marina pontoons accessed from their land.
- 5.9 If the Council does not progress the scheme then the risk of the residential and commercial properties at Church Street flooding will continue.

Construction works

- 5.10 Tenders were invited via the ProContract procurement portal.
- 5.11 By the due deadline, three tenders were received which were analysed by Mott MacDonald and the Council's Projects Manager and assessed on a cost and quality basis in accordance with the pre-determined assessment criteria stated in the tender documents. Mott MacDonald have prepared an independent tender analysis report which has been reviewed by officers who concur with the recommendation.
- 5.12 Subject to the satisfactory conclusion of all land transactions, it is recommended that the tender from Esh Construction is accepted, and authority is delegated to the Director (LD) in consultation with the Portfolio Holder for Major Protects to enter into contract with Esh Construction to construct the scheme

- 5.13 Visualisations of the proposed concrete flood protection wall, for the approval of the Leader, are included in Appendix B. Officers will also be seeking to incorporate a 'cast in' feature at the foot of the wall, similar to the wave design on the concrete wall around the Marine Drive. The final finish of the flood protection wall is subject to the approval of the local Planning Authority.
- 5.14 It is noted that a number construction projects will be ongoing in Whitby at the same time in 2019, and whilst this level of investment in Whitby is welcomed it also has potential implications for the town, and it is proposed that these will be reported to and managed through the Major Projects Board.

6. IMPLICATIONS

Policy

- 6.1 There are no policy implications as a result of this report.

Legal

- 6.2 The works will be carried out using the Councils permissive powers under the Coast Protection Act & the Flood and Water Management Act.
- 6.3 There is a requirement to follow the Council's financial and contract procedure rules for all procurement. The procurement of the Contractor has been carried out following a mini-competition through the YORcivils Framework which is EU complaint, albeit that the value of the works is below the EU threshold.
- 6.4 This scheme requires the agreement of access arrangements with third party landowners as well as an agreement with NYCC in respect of the land on which the new flood protection wall will be built. This report seeks to delegate authority to the Director (LD) in consultation with the Portfolio Holder for Corporate Investment to enter into these land transactions.

Financial

- 6.5 The financial aspects of the project were reported to Cabinet on 13 November 2018 in the addendum to agenda item number 7 financial monitoring report to September 2018 – quarter 2 (18/266).
- 6.6 An overview of the revised cost profile of the project is:

Costs	£ k
Consultants (design and planning)	172
Site Investigation	32
Project Management	80
Construction	1,547
Contingency	263
Total	2,094

- 6.7 It is pleasing to note that the Environment Agency fully supports this project and have contributed £672k in grant aid. The Yorkshire Regional Flood and Coastal Committee's Local Levy are also in full support of this project and have allocated a £246k of funding. Scarborough Borough Council has allocated a £61k contribution, and North Yorkshire County Council has provided £15k.
- 6.8 The Council's contribution is towards the contingency. The project contingency will be managed through the Major Projects Board using the existing protocols in place.
- 6.9 Following the increase in project costs, an application for further funding was made to the LEP for £1.1m and has been approved which will now enable the project to progress. The final funding profile for the project is:

Funding	£ k
Environment Agency	672
Yorkshire Regional Flood and Coastal Committee's Local Levy	246
Scarborough Borough Council	61
North Yorkshire County Council	15
Local Enterprise Partnership	1,100
Total	2,094

- 6.10 The proposed contract makes provision for compensation events which is the mechanism used to vary the contract due to certain specified circumstances, such as changes in ground conditions, inclement weather etc. If any compensation events arise these will be funded from the project contingency.
- 6.11 No payments are to be made to the third party land owners to provide access for the works, as they are beneficiaries of the scheme. Throughout the construction stage of the scheme there is a requirement for the contractors to utilise the Church Street Car Park as a working depot. This utilisation will be in conjunction with Yorkshire Water in carrying out their infrastructure repairs. As a result it is envisaged that the entirety of the car park will be unavailable for public parking until late summer 2019.
- 6.12 The project budget does not allow for any compensatory payments in relation to loss of parking income to the Council. Should parking demand not be disbursed to alternative car parks this shortfall will need to be subsidised utilising the scheme contingency.
- 6.13 While designated areas with Yorkshire Water are still to be finalised, on the assumption of a 50:50 shared area split, should only 50% of vehicles be absorbed into alternative car parks, this could result in a parking income deficit of £38k.

Equalities and Diversity

6.14 There are no equalities and diversity implications as a result of this report.

Staffing

6.15 There are no staffing implications as a result of this report.

Planning

6.16 There are no direct planning implications as a result of the report. Planning permission for the project has been obtained.

6.17 The final colour scheme for the concrete used for the flood protection wall as well as the final finish of the wall is still subject to approval of the Local Planning Authority.

Health and Safety

6.18 There are no direct health and safety implications as a result of this report.

6.19 All of the health and safety implications in construction will be managed by the Principal Designer and Principal Contractor for the purposes of the Construction (Design and Management) Regulations 2015.

7. ACTION PLAN

7.1 The following timescales are proposed for the project (subject to coordination with the ongoing Yorkshire Water works) :

Contract with Contractor	February 2019
Commence works on site	March 2019
Complete works on site	October 2019



Jim Dillon
Chief Executive

Author: *Chris Bourne, Projects Manager*
Telephone No: 01723 232447
E-mail address: chris.bourne@scarborough.gov.uk

Background Papers:

None.

IF YOU HAVE ANY QUERIES ABOUT THIS REPORT OR WISH TO INSPECT ANY OF THE BACKGROUND PAPERS, PLEASE CONTACT THE AUTHOR.

Appendix A

Risk Matrix

Risk Ref	Date	Risk	Consequences	Mitigation	Current Risk Score	Target Score	Service Unit Manager/ Responsible Officer	Action Plan
1	15.12.14	Lack of public acceptance of the proposed solution.	Public relations issues to resolve.	<p>Consultation has been undertaken to give people the opportunity to understand issues and raise their opinions.</p> <p>Planning permission obtained.</p>	C4	B2	Projects Manager	Information sharing during the project.
2	21.11.18	Extreme flood event >1 in 100 years occurs which overtops new flood wall.	Flooding of properties.	High flood design threshold. 100 year design life.				
3	21.11.18	Failure to conclude land access agreements.	Project does not proceed.	Early discussion with land owners	B4	A4	Projects Manager	
4	21.11.18	Budget is exceeded due to compensation events arising.	<p>Project costs increase.</p> <p>Contingency may become expended.</p> <p>Contingency sums underwritten by beneficiaries may need to be accessed and expended.</p> <p>Due to pressures on funding, it should not be assumed that any changes to the approved</p>	<p>Project Board to monitor project progress.</p> <p>Risk contingency in place.</p> <p>Negotiate with NYCC and EA over further contributions.</p>	C3	B3	Projects Manager	<p>Ensure risks are identified and managed and suitable provision made.</p> <p>Use early warning procedure in contract.</p>

Risk Ref	Date	Risk	Consequences	Mitigation	Current Risk Score	Target Score	Service Unit Manager/ Responsible Officer	Action Plan
			spending profile or an increase in costs will secure additional grant aid. Additional costs may therefore need to be met by beneficiaries.					
5	21.11.18	Programme is delayed.	Works continue on site for longer. Potential for additional costs if reason for delay is a compensation event.	Project Board to monitor project progress.	C4	B3	Projects Manager	Implement early warning procedure
6	21.11.18	Council attracts legal liabilities and responsibilities as a result of undertaking works.	Council could be subject to legal action from affected property owners.	Satisfactory legal agreements to be in place prior to commencement of works.	B4	A2	Director (LD)	Seek legal advice
7	21.11.18	Detrimental impacts on Whitby town centre as a result of having a number of significant construction projects all taking place at once.	Traffic disruption. Noise pollution. General inconvenience.	This project is on the opposite side of the Esk.	C2	A2	Projects Manager	Liaison between contractors and project managers.
8	11/1/19	Yorkshire Water emergency works have an impact on the Council's works.	SBC contractor is delayed and programme increases. Project costs increase. Loss of car parking income.	YW starting in advance of SBC project so overlap may be reduced. Discussions held to work together and work around each other.	D3	B2	Projects Manager	Liaison meeting with YW. SBC officers to be present during YW site set up. Licence

Risk Ref	Date	Risk	Consequences	Mitigation	Current Risk Score	Target Score	Service Unit Manager/ Responsible Officer	Action Plan
				Discussions held for YW to be responsible for costs incurred by SBC as a result of their works.				agreement with YW for access to car park.

Glossary of Terms

Risk	An event which may prevent the Council achieving its objectives
Consequences	The outcome if the risk materialised
Mitigation	The processes and procedures that are in place to reduce the risk
Current Risk Score	The likelihood and impact score with the current mitigation measures in place
Target Risk Score	The likelihood and impact score that the Council is aiming to achieve
Service Unit Manager	The Service Unit or Officer responsible for managing the risk
Action Plan	The proposed actions to be implemented in order to reduce the risk to the target score

Risk Scoring

Impact	5					
	4					
	3					
	2					
	1					
			A	B	C	D
		Likelihood				

Likelihood:

A = Very Low
 B = Not Likely
 C = Likely
 D = Very Likely
 E = Almost Certain

Impact

1 = Low
 2 = Minor
 3 = Medium
 4 = Major
 5 = Disaster

Appendix B
Photomontage of proposed wall