

Key Decision Required:	Yes	In the Forward Plan:	Yes
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CABINET

11 DECEMBER 2015

REPORT OF COAST PROTECTION PORTFOLIO HOLDER AND FINANCE AND TRANSFORMATION PORTFOLIO HOLDER

A.3 CLACTON AND HOLLAND-ON-SEA COAST PROTECTION SCHEME END OF PROJECT REVIEW AND PROPOSED CLIFF STABILISATION WORK

(Report prepared by Mike Badger, Richard Barrett and Lisa Hastings)

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT

To review the Clacton to Holland Coast Protection Project including the estimated outturn for the project and set out proposals for cliff stabilisation work along parts of the same coastline.

EXECUTIVE SUMMARY

- The Clacton to Holland Coast Protection Scheme was substantially completed in the autumn with all of the new beaches open from 25 September 2015.
- The project took place over 2 years rather than the originally anticipated 3 year period.
- The estimated outturn for the project is **£33.055m**, which is significantly lower than the original budget of **£36.083m**.
- Although some amounts from the risk 'pot' of **£5.600m** are required to be called upon to finance the scheme, the potential use of the risk pot could have been significantly greater given the scale and nature of the scheme. A few activities still remain outstanding before the project is finalised with the anticipated costs included in the estimated outturn position above.
- The remaining estimated balance of the risk 'pot' totals **£3.028m** and after discussing the use of this money with the respective funding partners it has been identified that a potential use of the funding could be to support a cliff stabilisation project along parts of the same coast line.
- Recent instabilities and weather events have prompted investigations to assess cliff stability and the potential impact upon the new defences as the integrity of the coastal defences and coastal slopes are bound to each other. Therefore undertaking a complimentary project using the unspent funding from the major coast protection project provides a timely opportunity to further secure the seafront for regeneration opportunities and resident and visitor use in the long term.
- In respect of the funding partners, the Environment Agency has already confirmed that their share of the unused risk pot of **£1.947m** can be used for the Cliff

Stabilisation Project. Essex County Council will be formally approached regarding the proposed cliff stabilisation project and although they have yet to confirm their position, it is hoped that they are willing to allow their unused risk allowance to be used for the same project, subject to separate negotiation / agreement.

- To maintain the momentum that the coast protection project has started, it is proposed to commence a cliff stabilisation project as soon as possible on a phased approach to enable a pause between phases that gives the opportunity to review and confirm the funding position such as the potential contribution from ECC before any financial commitments are made.

RECOMMENDATION(S)

It is recommended that Cabinet:

- a) Notes the current position of the Clacton to Holland Coast Protection Project and agrees to the use of £1m of TDC's risk 'pot', being TDC's contribution to the project ahead of any contribution from ECC's own risk 'pot';**
- b) approves the new cliff stabilisation project for inclusion in the 2015/16 Capital Programme at a cost of £5.028m funded by grants of £1.947m from the Environment Agency, £0.081m from TDC's unused risk 'pot' and £3.000m from Anglian Water;**
- c) subject to the above, agrees to the delivery of the Cliff Stabilisation project in a phased approach to protect the Council's financial position should the funding position change over the delivery period of the project;**
- d) subject to c) above, agrees that delegation be given to the Corporate Director (Life Opportunities), in consultation with the Finance and Procurement and Legal Services Managers, to undertake the necessary procurement processes to appoint a Design and Project Management Consultant and a Works Contractor to deliver the Cliff Stabilisation project;**
- e) subject to the above, agrees that delegation be given to the Corporate Director (Life Opportunities) in consultation with the Portfolio for Coast Protection and the Portfolio Holder for Finance and Transformation to amend the Capital Programme should the funding position change; and**
- f) agrees to up to £0.065m being made available from the Contingency budget to support the remedial work being taken in response to sand building up under Clacton Pier which is being progressed in partnership with the pier owners.**

PART 2 – IMPLICATIONS OF THE DECISION

DELIVERING PRIORITIES

The Council's Corporate Plan, Tendring Life, recognises that Tendring's 36 miles of coastline and award winning sandy beaches are both our greatest assets as well as our most difficult and expensive management issues. Both the priorities 'Our Place' and 'Our Prosperity' are impacted by coastal defence issues, in that they relate to the development of a thriving tourist industry and of course protecting our environment. The project provides a major regeneration and tourism opportunity with the scale of the works and potential

benefits making a significant contribution to the delivery of the Council's economic aims and priorities.

FINANCE, OTHER RESOURCES AND RISK

Finance and other resources

This report covers two key projects - the Clacton to Holland Coast Protection Scheme and proposed cliff stabilisation work along parts of the same coast line. Before looking ahead to the proposed cliff work it is important to review the current scheme and its associated costs, which in turn will inform the scale and speed at which the proposed cliff work can proceed if agreed.

Clacton to Holland Coast Protection Scheme

The total funding / budget for the project was **£36.083m** with a breakdown across the various funding partners below:

Funding Partner	Agreed Funding (less Risk element)	Contribution to 'Risk Pot'
Environment Agency (EA)	£23.919m	£3.600m
Environment Agency (Accelerated Growth and Local Levy Funding)	£0.587m	n/a
Essex County Council	£3.000m	£1.000m
Tendring District Council	£2.977m*	£1.000m
Total	£30.483m	£5.600m

**This budget has been reduced from £3.000m to fund the business rates on Westleigh House which were occupied by the works contractor as the primary site office for the project. Therefore the full £3.000m has been applied but across different budgets.*

As set out in the original report agreed by the relevant Portfolio Holders in April 2014, the works contract and professional services contract were tendered using the Environment Agency's procurement framework (WEM Framework). In respect of the works contract the following pain / gain approach was adopted:

Sharing Arrangements	Contractors Share %
Final contract cost is less than 85% of the target price (adjusted for any compensation events)	0%
Final contract cost is between 85% and 115% of the target price (adjusted for any compensation events)	50%
Final contract is greater than 115% of the target price (adjusted for compensation events)	100%

There were a significant number of risks that the project was exposed to and although some additional costs emerged over the course of delivering the scheme, the actual cost is forecast to be delivered significantly below the scheme budget of **£36.083m**. It is important

to highlight that opportunities for savings were also identified during the delivery of the project which are also reflected in the forecast final position summarised in the tables below.

Forecast Outturn Position for the Project

Expenditure	Estimated Outturn £m
Project Design and Pretender work	0.540
Works Contract	31.478
Professional Services Contract	0.744
Other Costs	0.293
Total Cost of the Scheme	33.055
Less agreed Funding (excl. Risk element)	30.483
Variance (to be funded from the risk 'pot')	2.572

Financed by:

Funding Partners	Funding (excluding risk pot) £m	Call on the risk pot £m	Total Estimated funding Required (including risk pot) £m	Unspent Risk 'Pot'
EA	23.919	1.653	25.572	(1.947)
EA Accelerated Growth and Local Levy Funding	0.587	n/a	0.587	0
ECC	3.000	0.00	3.000	(1.000)
TDC	2.977	0.919	3.896	(0.081)
TOTAL	30.483	2.572	33.055	3.028

A more detailed analysis of the actual cost of the scheme, including the operation of the pain / gain formula relating to the works element of the scheme is set out in **Appendix A**.

The variance of **£3.028m** therefore represents the amount the scheme is estimated to be delivered under the budget of **£36.083m**.

In accordance with the funding agreements, a final report on completion of the project must be presented to the funding partners, with determination of the final completion of the project being made by the Project Board. This report will form the basis of gaining the necessary agreement from the project board as part of finalising the scheme.

In respect of EA funding agreement, a final audited account is required to be submitted to them within 24 months of the completion date. The issues set out in this report will form part of the audit work that is required but the proposed way forward in respect of the cliff stabilisation project acknowledges the timing differences and that the funding position could change. It is important to highlight that the EA have already considered the principles of a variation to the scope of the whole project to now include the proposed cliff stabilisation works set out further on in this report and have agreed that TDC draw down the remaining risk budget of **£1.947m** allocated to the original scheme.

In respect of the **£1.000m** unused element of ECC's risk 'pot', officers are exploring the opportunity of TDC applying to ECC for this funding to support the complimentary cliff stabilisation project.

ECC's interpretation of the use of the risk pot differs to the initial understanding of the position that was included in the report to members when the relevant tenders were accepted last year. Although this has been subject to on-going discussions with ECC over the last year, they remain committed to the interpretation that requires TDC to spend all of its **£1.000m** risk pot first before any call is made on theirs rather than accepting an equal share along with the EA. The above table reflects this approach and the recommendations set out in this report seek agreement to this revised funding approach.

Of the total expected cost of the project of **£33.055** set out above, **£0.266m** relates to estimated costs to complete the project such as the final valuations receivable from the works contractor.

Within the estimated outturn above, an allowance has been included to cover additional works that have arisen at the Pier end of the scheme. New beach levels are impacting upon the pier infrastructure and the long term outcome of this is unknown at present as the beach requires time to evolve with the coastal processes, the timing of which is dependent on prevailing weather and sea conditions. Ongoing monitoring is taking place together with regular dialogue and site inspections with the pier owners. An immediate risk is around the utility apparatus that are suspended under the pier deck with a solution now identified which is being progressed. It is also acknowledged that whilst the sand levels stabilise over the medium term there remains a risk that further liability may arise. The proposed solution involves the Council supporting the delivery of the project through a short term loan to the pier owners, the terms of which were agreed under the delegated responsibility of the Council's Monitoring and S151 Officers in consultation with the Corporate Director (Life Opportunities), with the proposed funding of up to **£0.065m** coming from the contingency budget that currently stands at **£0.353m**.

Ideally it would be helpful to wait until all of the estimated costs had been finalised and paid before considering any further use of the available funding, but it is considered important to keep momentum behind the significant improvement works that have already been delivered along the Clacton to Holland coast, by undertaking what could be argued as complimentary works to the cliffs now that their long term future has been secured following the coast protection works and to respond to the significant health and safety issues that parts of the cliffs present, with some dangerous areas continuing to be closed to the public.

Cliff Stabilisation Project and Funding

Discussions with Anglian Water (AW) have remained on-going throughout the life of the Clacton to Holland Coast Protection Scheme with the aim of securing additional funding, which have culminated in AW awarding TDC a grant of **£3.000m** towards the cost of the scheme.

In terms of using this funding, a 'base' option would be to add it to the original funding 'pot' which would then in turn reduce the contributions by the other funding partners including TDC. However in further discussions between the funding partners, the opportunity to undertake cliff stabilisation work has been identified as a project that any outstanding money could potentially be applied to.

As mentioned above the EA have already committed to allowing TDC to retain the **£1.947m** of funding that is not forecasted to be required for the original Clacton to Holland Coast Protection Scheme. When added to the **£3.000m** AW money and TDC's unused risk allowance of **£0.081m**, the total available funding is **£5.028m**.

Officers continue to explore with ECC the opportunity to apply their unused risk pot of **£1.000m** to the cliff stabilisation scheme.

It is also important to revisit the estimated costs that still remain within the forecast outturn position for the Clacton to Holland Coast Protection Scheme. As previously mentioned, **£0.266m** of the forecast cost relates to estimated amounts.

Therefore for the purposes of considering the proposed Cliff Stabilisation Project, it is prudent to assume available 'base' funding of **£5.028m** as mentioned above at this stage.

Building on this 'base' position and given the level of uncertainty, there are essentially four potential options to provide a sound financial basis against which to consider the cliff stabilisation project:

- 1) Wait until all estimated amounts are known and accounted for – this approach will cause significant delays in procuring and delivering the required cliff stabilisation work and potentially put at risk the funding commitments made by the external partners and prevent the Council from responding to the health and safety issues that parts of the cliffs present.
- 2) A more pessimistic approach could be taken in estimating final costs associated with the Clacton to Holland Coast Protection Scheme. However this would significantly reduce the funding available for the cliff stabilisation work and restrict the scale of the project that would have to be factored into the associated procurement processes. There is also no guarantee that the revised estimated amounts to finalise the Clacton to Holland Project would be enough to cover the final cost so uncertainty would still remain.
- 3) It is possible to underwrite the risk that the final cost of the Clacton to Holland Coast Protection Scheme is greater than that currently estimated. It would be necessary to identify and ring fence the necessary revenue budget or reserve to implement this option. This could potentially restrict the level of spend to save initiatives or one-off investment undertaken elsewhere in the Council if resources were earmarked in this way in the short to medium term as they could not be 'released' until such time as final amounts became known..

- 4) It is possible to plan and manage the cliff stabilisation works in a phased approach and therefore pausing at specific points in the programme to reconfirm the funding position on an on-going basis before the next phase is commenced. If the phases were treated as separate standalone projects then it would be possible to deliver the project in this way, which would need to be clearly set out in the associated procurement process. The procurement process would also require the relevant Portfolio Holder to give their concurrence to the selected contractor which would enable a timely review of the available funding position before any contractual commitment was made.

On balance and limiting the impact elsewhere on the budget or reserves or slowing down the momentum that has built up via the Clacton to Holland Coast Protection work, option 4 provides a pragmatic way to deliver the project and gives the Council a more robust mechanism of controlling costs set against an uncertain funding position at this stage.

Taking all of the above into account this report sets out the background and approach to delivering a cliff stabilisation project to parts of the Clacton to Holland coast line, within funding estimated to be available of up to **£5.028m**.

LEGAL

The Council has permissive powers to carry out these works under the provisions of the Coast Protection Act 1949. The Council has a duty to exercise its powers reasonably having regard to all the relevant circumstances.

Research was undertaken whether the existing contracts could be used for the cliffs stabilisation however, the restrictions within the Public Contract Regulations 2015 and recent court decisions determining material changes to contracts ruled out this option. The new requirements went beyond the acceptable change to an original tendered scope and increase in financial value.

The proposed procurement route is to reuse the Environment Agency's Water and Environment Management (WEM) Framework and by doing so, the Council can adequately demonstrate that it has fulfilled any obligations set out in the Public Contracts Regulations 2015.

Any contracts proposed for the various strands of procurement will follow the standard NEC forms of contract.

OTHER IMPLICATIONS

Consideration has been given to the implications of the proposed decision in respect of the following and any significant issues are set out below.

Crime and Disorder / Equality and Diversity / Health Inequalities / Area or Ward affected / Consultation/Public Engagement.

Crime and Disorder – No direct implications

Equality and Diversity – No direct implications

Health Inequalities – No direct implications

Area or Ward affected – St. Paul's, St. Bartholomews and Haven

Consultation/Public Engagement – Public consultation and engagement has been undertaken for the Essex & South Suffolk Shoreline Management Plan, the Clacton &

PART 3 – SUPPORTING INFORMATION

CLACTON TO HOLLAND COAST DEFENCE PROJECT

Following the preparation of a Project Appraisal Report to the Environment Agency and subsequent approval by their Large Project Review Group in September 2013, Flood Defence Grant In Aid was awarded to enable a scheme to protect more than 3000 homes and businesses from coastal erosion for the next 100 years to proceed.

A procurement process was followed using the Environment Agencies WEM Framework and Mott Macdonald were appointed to undertake the project management and site supervision and VBA were appointed to undertake the works to construct 23 new rock groynes and recharge beach material along the 5 KM frontage from Clacton Pier to Holland Haven.

The scheme was managed by a project team that consisted of representatives from the funding partners and the Portfolio Holder for Coast Protection.

Initially it was planned to phase the works over 3 summer seasons commencing in 2014 however the offer from VBA was to deliver the scheme with an accelerated programme over 2 years. Works started on site on 22 July 2014 at Holland Haven and the first phase was completed and 8 beaches opened in January 2015. A decision was taken by the project team to stop works for 2 months over the early part of 2015 to reduce the project risk of weather disruption and works recommenced on site in early March 2015 on the second phase. This progressed at pace and the main groyne construction and beach recharge was completed by end of August with some beaches opening prior to this.

The works involved more than 270,000 tonnes of rock being delivered from Norway by 61 vessel round trips, then transshipment to the beach by barge for placement in the 22 fishtail rock groynes and the terminal groynes at Holland Haven. The beach material was dredged from a licenced extraction site 19kms off shore and delivered to the frontage by specialist vessels, a total of just under 960,000m³ of material has been placed and profiled to form the new beach.

The beaches were fully opened to the public on 25 September and a contractual substantial completion certificate issued on 1 October 2015.

Cabinet considered a report at their meeting on 23 October 2015 that set out a number of key regeneration opportunities along the Clacton to Holland frontage to maximise the benefit from the major coast protection project. Work is now underway to deliver projects in both the short term and medium term which in turn will support the maintenance of the new beaches into the future.

As set out in the financial section of the report above, there are a number of issues that need to be addressed / completed as part of finalising the project, which will include an audit of the scheme costs.

PROPOSED CLIFF STABILISATION PROJECT

The coastal slope along the Clacton and Holland on Sea frontage comprises sands and gravels over London Clay with perched water tables and has a history of instability and failure over the past century.

Recent instabilities and weather events have prompted investigations to assess slope stability and modes of failure and the potential impact upon the new defences as the integrity of the coastal defences and coastal slopes are bound to each other.

An assessment was carried out by Mott Macdonald who conclude that some sections of cliff are over steep due to space constraints, and suffering increase in pore water pressures within the slopes and the development of perched water table as a result of blocked and deteriorating inclined slope drainage which decreases the effective normal stress in the ground materials leading to a reduction in shear stress. Also increased loading near the top of the slope due to the perched water.

The assessment suggests a range of remedial measures involving retaining structures at the toe of the slope, re-grading the slope and replacement of the inclined drainage.

Further detailed assessments are required involving monitoring and surveys to allow preferred designs to be progressed and prioritised at the sites along the frontage identified in the initial assessment...

The proposed work is outside the scope of the original project and therefore a separate procurement exercise would be required rather than a variation to the original works contract.

In terms of the procurement process, it is proposed to use the EA's WEM framework given the success and value for money that it provided when identifying the works and professional services contractors for the Clacton to Holland Coast Protection Project.

As discussed in the finance section of this report, it is proposed to design a scheme that is delivered on a phased approach to accommodate the potential changes in funding that may emerge. However it is hoped that during the procurement process and before any contractual commitment is made, the funding position will become clearer as outstanding amounts that are currently estimated are confirmed along with the outcome from exploring with ECC the potential for TDC to receive their unspent risk 'pot' of **£1.000m** from the Clacton to Holland Coast Protection Project.

In taking the phased approach as set out in Option 4 above, the procurement process would initially focus on securing a design and project management consultant using WEM Lot 3. Following appointment and completion of detailed assessments of the needs of the frontage a clearer position will be identified to inform the required works procurement process.

A pause during the detailed design process can be taken to enable a realistic assessment and prioritisation of the required remediation measures. It will also provide an opportunity for the design consultant to fully support TDC in the procurement and tender process using WEM Lot 4 for the appointment of a works contractor.

BACKGROUND PAPERS FOR THE DECISION

WEM Framework

APPENDICES

APPENDIX A – Detailed Analysis of the Costs associated with the Clacton to Holland Coast Defence Project

Detailed Analysis of Clacton to Holland Coast Protection Scheme Costs**1) Works Contract**

	£m	Comments
Target Price (as tendered)	30.240	
Compensation Events Agreed	1.100	
Estimate of Outstanding Compensation Events	0	
Total Target Price	31.340	100% of which met by funding partners
Latest works valuation	31.434	
Forecast of final costs	0.183	Final valuation due in January 2016
Total Forecast Cost	31.617	
Actual Cost in excess of Target Price	0.277	To be shared 50% funding partners and 50% contractor
Pain Gain Share to be met by Contractor	(0.139)	
Total Forecast Cost to be met by funding partners	31.478	Actual Cost of £31.617m less costs met by contractor of £0.139m

2) Professional Services Contract

	£m	Comments
Price Tendered	0.569	
Compensation Events Agreed	0.165	This primarily covered the 24/7 supervision that differed from the original tendered specification and aligned with the accelerated 2 year contractors works programme..
Estimate of Outstanding costs to completion	0.010	
Total Cost to be met by funding partners	0.744	

3) Other Costs (to be met from within original budget of £36.083m as agreed by the funding partners as part of the overall cost of the scheme)

	£m	Comments

Compensation costs	0.057	A number of businesses were affected by the closure of sections of the seafront during the works.
Waiving the cost of the annual beach hut licence for affected beach hut owners	0.080	
Other	0.083	Includes an amount for additional work to respond to the build-up of sand under the pier that although may resolve itself over the longer life of the scheme, it is presenting an issue that is being addressed in the short term
Forecast of additional costs to completion of the project	0.073	
Total Cost to be met by funding partners	0.293	