

Council Report

Title:

Delivery of the Holmes Tail Goit Pumping Station

Is this a Key Decision and has it been included on the Forward Plan?

Yes

Strategic Director Approving Submission of the Report:

Damien Wilson, Strategic Director, Regeneration and Environment

Report Author:

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Ward Affected:

Boston Castle

Summary:

To report on the background to the Holmes Tail Goit scheme, as proposed during the planning and development of the New York Stadium in order to reduce the risk of town centre flooding. The report explains the likely costs associated with the completion of these works and how these should be met.

Recommendations:

1. That the commitment in the Council's approved Capital Programme to the value of £1,599,632 inclusive of the Environment Agency (EA) contribution of £212,000 be noted and the fixed contribution by RU Estates of £684,258 be endorsed.
2. That it be noted that the contingency with the current works estimate is only £66,113 and that this figure may be exceeded, and that expenditure over and above this figure would also rest with the Council.
3. That the Assistant Director Legal Services be authorised to negotiate with R U Estates to finalise heads of terms for a formal deed of settlement and variation to the lease setting out the respective rights and responsibilities of the parties as set out at 8.1 of this report.
4. That tenders be sought to procure a contractor to deliver the project subject to the tender prices received being within the threshold of the current estimates outlined above.

List of Appendices Included

None.

Background Papers

None

Consideration by any other Council Committee, Scrutiny or Advisory Panel: No

Council Approval Required:

No

Exempt from the Press and Public:

No

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1. Recommendations

- 1.1 That the commitment in the Council's approved Capital Programme to the value of £1,599,632 inclusive of the Environment Agency (EA) contribution of £212,000 be noted and the fixed contribution by RU Estates of £684,258 be endorsed.
- 1.2 That it be noted that the contingency with the current works estimate is only £66,113 and that this figure may be exceeded, and that expenditure over and above this figure would also rest with the Council.
- 1.3 That the Assistant Director Legal Services be authorised to negotiate with R U Estates to finalise heads of terms for a formal deed of settlement and variation to the lease setting out the respective rights and responsibilities of the parties as set out at 8.1 of this report.
- 1.4 That tenders be sought to procure a contractor to deliver the project subject to the tender prices received being within the threshold of the current estimates outlined above.

2. Background

- 2.1 Prior to the construction of the New York football stadium, issues around flood risk and the works required to develop the site were set out, both through the planning approval given and the subsequent lease granted by the Council. The key component of the flood protection scheme was works to the Holmes Tail Goit watercourse, specifically the installation of a new pump and pumping station, designed to force surface water into the River Don in the event of flooding.
- 2.2 The agreement of the lease for the stadium provided that Rotherham United (RU) Estates Limited would undertake these works and thereafter the Council would take over maintenance of the Goit and associated pumping station. RU Estates Ltd expressed difficulty in paying the associated costs of these works and sought a contribution from the Council, although some works have been completed.
- 2.3 Further to recent discussions between the Council and RU Estates a final estimate has been provided by RU Estates for the completion of the scheme (May 2016), the estimated value of the scheme is £2,217,777. An independent estimate of the new works generally supports this figure. The estimated project cost is now within the identified funding contributions.
- 2.4 The Council has provisionally agreed to undertake the management of the project, including the procurement and delivery on site although this agreement has not been formally documented.

3. Key Issues

- 3.1 The absence of these works risks economic loss to the town in the event of a major flood event affecting the town centre, local businesses and transport links. This would in turn affect the reputation of the Council.
- 3.2 Both principal parties, namely the Council and RU Estates would like to limit their contributions to the figures stated above, with the Council taking the risk of expenditure over and above current estimates. However, further discussion will magnify the risk outlined in 3.1 above. The Council must ensure that it does not breach state aid rules or its fiduciary duty to protect the public purse.

4. Options considered and recommended proposal

- 4.1 Previously, options around continuing negotiation and/or mediation and/or enforcement and litigation have been considered. It is proposed that these works should be progressed as soon as possible with the Council taking the risk of any additional expenditure over and above current estimates, subject to a further review when the target price from the proposed contractor is known.
- 4.2 The current estimate allows a risk contingency of £66,113, but this is derived from the gap between available funding and estimated cost and not from any formal quantified risk assessment for the project. This represents approximately 4% of the estimated contractor works costs still to complete.

5. Consultation

- 5.1 There has been no consultation with respect to this proposal over and above the discussions which have taken place between the Council, RU Estates and the EA.

6. Timetable and Accountability for Implementing this Decision

- 6.1 The project will be managed by the Transportation and Highways Projects group within the Council. Approvals have been sought from those officers named in Section 14 below. It is anticipated that works will start in the summer of 2017 and be complete by spring 2018.

7. Financial and Procurement Implications

- 7.1 The estimated cost for completing the proposed works is as follows:

Main works costs:	£1,968,319
Pumps (storage and transport):	£ 21,600
Professional fees	£ 198,600
RU Estates Legal fees	£ 29,258
Total	£2,217,777

(All of the above figures include expenditure already incurred under the stated headings, which totals £508,220).

7.2 The available funding contributions to meet these costs are:

RU Estates	£ 684,258
RMBC	£1,387,632
EA Grant	£ 212,000
Total	£2,283,890

The Council's existing Capital Programme budget for this project (including the EA Grant) was approved by Council on the 2nd March 2016, as part of the approval of the Council's Capital Programme (2016 – 2021).

7.3 The procurement of the contract for the remaining main works will have to comply with Public Contracts Regulations 2015 the Council's standing orders and financial regulations. This would be the case even if the procurement responsibilities are carried out by RU Estates, with the project management being provided by the Council as outlined above. This is the case as the Council is providing the majority of the funding.

8. Legal Implications

8.1 It will be necessary for the current legal framework covering delivery of the Goit works to be formally varied. This is contained in the agreement for lease and lease of the football stadium property, both of which documents are under seal. Accordingly a formal deed of variation of these documents must be negotiated and settled. R U Estates are aware of this requirement and previously agreed with this approach.

In addition, as the costs and scope of the Goit works has expanded since the original documents were entered into further provisions relating to the settlement recommend by this report will be needed to be agreed, including:

- each parties' respective contribution;
- which party bears cost risk;
- which party bears overall responsibility for the delivery of the works;
- who is the "client" for building contract purposes;
- rights of entry onto the football stadium land and indemnities covering these rights;
- design responsibility;
- variation of the lease relating to re-routing of drainage from Riverside House as this presently run through the position of the pumping station

To this end officers recommend that detailed heads of terms for a combined deed of settlement and variation be negotiated with R U Estates.

8.2 There has been concern that the settlement may constitute state aid to R U Estates and detailed legal advice in this regard has been obtained from Counsel. The advice is clear that such an arrangement as described within this report would not constitute State Aid.

9. Human Resources Implications

- 9.1 It is intended to project management the delivery of these works internally through the Transportation and Highways Projects Group.

10. Implications for Children and Young People and Vulnerable Adults

- 10.1 None directly arising from this report.

11 Equalities and Human Rights Implications

- 11.1 None directly arising from this report.

12. Implications for Partners and Other Directorates

- 12.1 The works, once complete, will incur a continuing maintenance cost which will fall to the Council, but this sum is small and has not been disputed.

13. Risks and Mitigation

- 13.1 By not implementing these works, the town centre is at risk of economic loss and physical damage in the event of a major flood event. The Council's reputation would also be damaged. Implementation of the works removes this risk.
- 13.2 The contingency for unforeseen occurrences during the construction process is small and is determined by available income less estimated costs. Should this figure prove inadequate, then any additional costs will rest with the Council. In order to mitigate this risk, the Council will lead on procurement and project management, retaining control of the project.
- 13.3 The legal risks identified in section 8 above are mitigated by detailed negotiations of heads of terms and obtaining Counsel's advice.

14. Accountable Officer(s)

Approvals Obtained from:-

Strategic Director of Finance and Customer Services:- Jonathan Baggaley

Assistant Director of Legal Services:- Dermot Pearson

Head of Procurement (if appropriate):- Helen Chambers