



Executive Director/Director Non-Key Executive Decision Report

Author/Lead Officer of Report: *David Brown
(Project Manager, Capital Delivery Service)*

Tel: 07770544516

Report to: *Mick Crofts (Interim Executive Director, Place portfolio)*

Date of Decision: *22/2/21*

Subject: *Upper Don flood alleviation scheme - Agreement with the Environment Agency*

Which Cabinet Member Portfolio does this relate to? *Environment, Streetscene and Climate Change*

Which Scrutiny and Policy Development Committee does this relate to? *Economic and Environmental Wellbeing*

Has an Equality Impact Assessment (EIA) been undertaken? Yes No

If YES, what EIA reference number has it been given? *513*

Does the report contain confidential or exempt information? Yes No

Purpose of Report:

This report seeks authority for the Council to conclude an agreement ('the Agreement') with the Environment Agency ('EA') which will give the Council the necessary statutory authority to progress the Upper Don flood alleviation scheme ('the Scheme').

As the Upper Don is categorised as a 'Main River' the statutory powers to carry out works on this river in relation to flood risk management lie with the EA, not the Council. However, the EA has given approval for the Council to implement a flood alleviation scheme on the Upper Don. Indeed it is contributing funding for the Scheme. As it is the Council who are implementing the Scheme, they require the same statutory powers (in relation to the Scheme) as the EA. Accordingly the EA has agreed to enter into the Agreement to confer certain necessary statutory

authorisations on the Council and to make certain other arrangements relating to the Scheme.

Recommendations:

The Executive Director, Place is recommended to agree to the City Council entering into an agreement with the Environment Agency in the form appended to this report.

Lead Officer to complete:-	
1	I have consulted the relevant departments in respect of any relevant implications indicated on the Statutory and Council Policy Checklist, and comments have been incorporated / additional forms completed / EIA completed, where required.
	Finance: Damian Watkinson
	Legal: David Cutting
	Equalities: Annmarie Johnston
<i>Legal, financial/commercial and equalities implications must be included within the report and the name of the officer consulted must be included above.</i>	
2	Lead Officer Name: <i>David Brown</i>
	Job Title: <i>Project Manager, Capital Delivery Service</i>
Date: <i>22/2/21</i>	

1. PROPOSAL

- 1.1 *That the Council enters into an agreement ('the Agreement') with the Environment Agency ('EA') which will give the Council the necessary statutory authority to progress the Upper Don flood alleviation scheme ('the Scheme').*
- 1.2 *As the Upper Don is categorised as a 'Main River', the statutory powers to carry out works on this river in relation to flood risk management lie with the EA, not the Council. The EA wishes to see the Scheme implemented. Indeed it is providing funding for the Scheme. Accordingly the EA has agreed to enter into the Agreement to confer certain necessary statutory authorisations on the Council and to make certain other arrangements relating to the Scheme.*
- 1.3 *The EA by virtue of section 165(1) of the Water Resources Act 1991 ('the 1991 Act') has general powers to carry out flood defence and drainage works in connection with a main river and by virtue of section 165(5) of that Act may enter into an agreement with any local authority for the carrying out by that authority of any work in connection with a main river which the EA is authorised to carry out. This is the basis of the proposed Agreement: the Council will be authorised by the EA to exercise the EA's section 165 powers in relation to the Upper Don on the terms set out in the Agreement.*
- 1.4 *The major provisions of this Agreement can be summarised as follows :*
- Authority to Undertake the Scheme and Access to Land (Clause 4)**
- 1.5 *The EA authorises the Council to use its Section 165 powers to carry out the Scheme. The EA will authorise appropriate Council officers to exercise the EA's statutory powers of entry onto private land if these are required to carry out the works. Additionally, where entry is required for the purposes of operating flood defences forming part of the Scheme the EA will authorise appropriate contractors of the Council to exercise these powers of entry, subject to the Council satisfying the EA (acting reasonably) that appropriate procedures and training are in place to ensure that these powers are exercised correctly and appropriately.*
- Statutory Compensation and Other Claims (Clause 3)**
- 1.6
- 1.6.1 *The Council agrees to reimburse the EA for any Statutory Compensation paid by it in consequence of the Council's use of its powers and associated costs in dealing with such claims provided that the EA shall take all reasonable steps to avoid or mitigate any such Statutory Compensation.*
- 1.6.2 *The Council will indemnify the EA in respect of any other claims against the EA arising in connection with the Scheme (other than claims for Statutory Compensation) which do not*

result from any negligent act, default or omission on the part of the EA or any other person (other than the Council) acting on behalf of the EA, but the EA shall take all reasonable steps to avoid or mitigate any such claims. A procedure for dealing with any such claims is set out in Schedule 1 of the Agreement.

2. HOW DOES THIS DECISION CONTRIBUTE ?

- 2.1 *Entering into the Agreement will give the Council the statutory powers it may need to rely on to implement the Scheme. The Scheme is intended to significantly improve the standard of flood protection in the Upper Don catchment within Sheffield.*
- 2.2 *This proposal is aligned with the Councils strategy for managing flood risk to the city and contributes to the task of addressing the impact of climate change. The increased standard of flood protection provided by this scheme will not only benefit existing residential and commercial properties and infrastructure but will also enhance the conditions for future economic development.*

3. HAS THERE BEEN ANY CONSULTATION?

- 3.1 *The Scheme was the subject of a city-wide public consultation exercise in 2016, the results of which were made publicly available in 2017.*
- 3.2 *Further, more targeted consultation has subsequently been undertaken for Phase 1 of the Scheme from 2018 through to the present day and the majority of the stakeholders are supportive of the proposals.*

4. RISK ANALYSIS AND IMPLICATIONS OF THE DECISION

4.1 Equality of Opportunity Implications

- 4.1.1 *Although there are no direct equality implications from this proposal, it does contribute to the delivery of the Protecting Sheffield from Flooding strategy. This strategy should have a positive impact on all social groups within the city, with the highest benefit for those groups most vulnerable to flooding. Government guidance outlines that those groups most vulnerable to the impact of flooding are : the elderly, disabled, long-term sick, financially deprived, single parents, children, BAME community and homeless.*

4.2 Financial and Commercial Implications

4.2.1 *The inclusion of the scheme in the council's capital programme was first approved at cabinet in March 2019 with a subsequent budget increase to the full cost of the scheme (£9,185,000) approved in March 2020.*

Funding of the scheme is via:

The Environment Agency - £1.975m

Sheffield City Region Investment Fund - £3.46m

Community Infrastructure Levy - £3.75m

4.2.2 *Officer time and other costs associated with meeting the obligations of the Agreement are, or will be, allowed for within project budgets, for example fees for contract management and legal services. As such, these functions will be fully financed from secured project budgets and not from Council revenue budgets.*

4.2.3 *The impact to the programme of contracted works if the council cannot gain access to private land (which this agreement would allow) is estimated delay costs of £25k per week. This would be a significant impact on the scheme contingency budget of £550k.*

4.3 Legal Implications

4.3.1 *Under s.6 of the Flood and Water Management Act 2010 the City Council is both the Lead Local Flood Authority and a Risk Management Authority (RMA) for its metropolitan district and is under a duty to cooperate with other relevant authorities in the exercise of their flood risk management functions. How the Council will discharge this statutory duty is stated within the Council's Flood Risk Management Strategy 2020.*

4.3.2 *By undertaking the proposed flood alleviation works the Council will be abiding by its Flood Risk Management Strategy and thereby discharging its statutory duties.*

4.3.3 *The Water Resources Act 1991 (s.165(1)) empowers the EA to undertake flood risk management work. This power can be delegated to a local authority under subsection (5). The proposed s.165(5) Agreement will therefore confer on the Council the statutory powers it may need for it to carry out the proposed scheme which would otherwise be exercised by the EA. Without agreement from the EA to authorise the Council to exercise these powers the scheme may not be delivered in the most efficient and timely manner.*

4.3.4 *The Localism Act 2011 s.1 provides local authorities with a "general power of competence" which enables them to do anything that an individual can do so long as the proposed action is not specifically prohibited. A purpose of the Act is to enable local authorities to work in innovative ways to develop services that meet local need. Entry into the Agreement and*

subsequent delivery of the proposed flood alleviation scheme works can be delivered via the Council using its general power of competence.

- 4.3.5 *The key provisions of the Agreement are summarised in Section 1 of this report and include a number of obligations which will be legally binding on the Council. The Agreement is largely in an identical form to that entered into by the Council for the Lower Don Valley flood alleviation works and in that regard does not give rise to any issue of concern.*

5. ALTERNATIVE OPTIONS CONSIDERED

- 5.1 *If the Council were not to enter into the Agreement it risks being unable to deliver the Scheme in the most efficient and timely manner and in so doing risks being exposed to increased and unnecessary costs.*

6. REASONS FOR RECOMMENDATIONS

- 6.1 *The completion of the Agreement is recommended so that the Council may deliver the Scheme in the most efficient and timely manner and hence improve the standard of flood protection in the Upper Don catchment within Sheffield.*