

**Forward Plan reference number: FP/AB/255**

<b>Report title:</b> A28 Sturry Link Road Project Update	
<b>Report to Accountability Board on 14<sup>th</sup> February 2020</b>	
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<b>Date:</b> 02/02/2020	<b>For:</b> Decision
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<b>SELEP Partner Authority affected:</b> Kent	

**Confidential Appendix**

This report has a confidential appendix which is not for publication as it includes exempt information falling within paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972, as amended.

**1. Purpose of Report**

- 1.1 The purpose of this report is for the Accountability Board (the Board) to receive an update on the delivery of the A28 Sturry Link Road project (the Project), Canterbury, Kent.
- 1.2 The Project has previously been approved by the Board for the award of £5.9m LGF but is identified as high risk, due to the risk to the private sector funding contributions to the Project.
- 1.3 As a result of the project risks, the Board has received individual update reports on the Project since June 2019. In November 2019, the Board agreed that if satisfactory progress had not been made towards securing the full funding package by this meeting of the Board, the Board would consider the reallocation of the LGF to the next Project on the LGF pipeline.
- 1.4 By this meeting of the Board it was expected that planning consent could have been secured for the delivery of the Project and the private sector developments due to financially contribute towards the delivery of the Project.
- 1.5 Whilst progress has been made towards securing planning consent for the Project and associated developments, consent has not yet been secured. As such, the Board are asked to consider the next steps for the Project.

**2. Recommendations**

- 2.1 The Board is asked to agree one of two options:

Option 1

## A28 Sturry Link Road Update Report

- 2.1.1 **Agree** to reallocate the £4.791m unspent LGF from the Project to the next project on the LGF3b pipeline; and
- 2.1.2 **Agree** that there is compelling justification for SELEP not to recover £1.109m LGF spend to date, subject to the spend being accounted for by Kent County Council as a capital cost; or

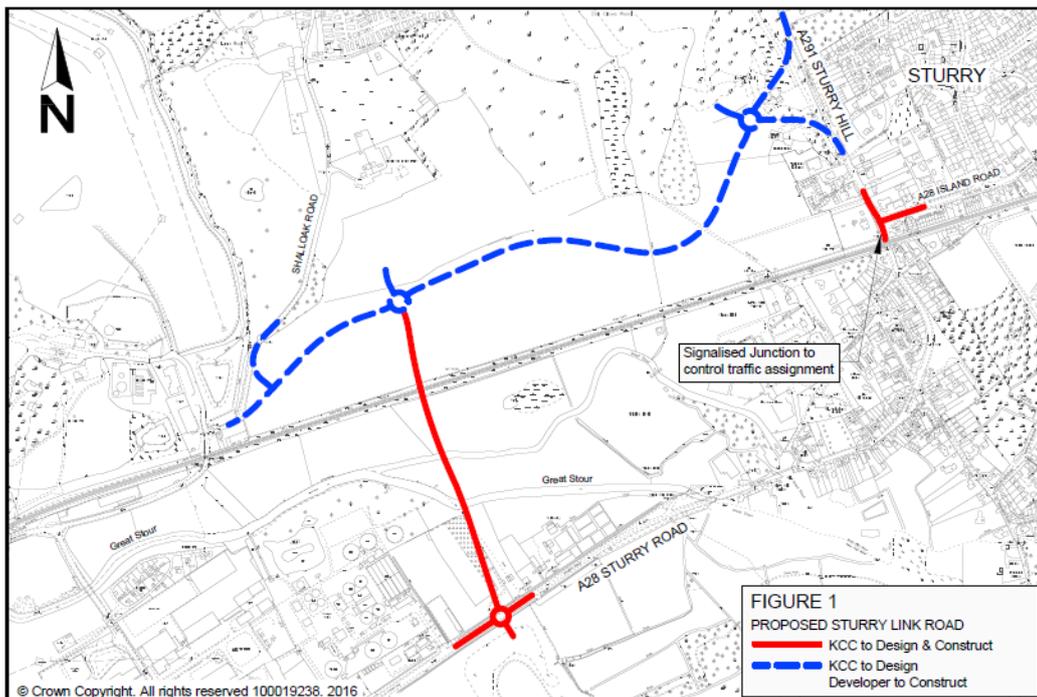
### Option 2

- 2.1.3 **Agree** that £4.791m unspent LGF will be automatically reallocated to the LGF3b pipeline if planning consent is not secured by 1<sup>st</sup> April for:
  - 2.1.3.1 the Broad Oak Farm and Sturry development; **and**
  - 2.1.3.2 the Project itself.

## 3. A28 Sturry Link Road (the Project)

- 3.1 The Project is for the delivery of the new link road between the A291 and A28, to the south west of Sturry, Canterbury, Kent. The LGF is due to contribute to the cost of constructing a bridge over a railway line and the Great Stour River, to enable traffic to avoid the Sturry level crossing and the congested road network in the area. The sections shown in red in Figure 1 overleaf show the sections of road included as part of the scope of the LGF Project.
- 3.2 To connect the Project to the existing highway, the developers will be delivering a spine road through the new development site to connect the bridge with the A291 to the North East of the residential and commercial development. This connection is essential to enable traffic to use the new bridge funded as part of the LGF Project. The spine road to be funded and delivered by the developers is shown in blue in Figure 1.

**Figure 1 A28 Sturry Link Road**



- 3.3 The overall objective of the Project is to tackle the existing congestion problem which currently exists at the Sturry level crossing and at the A28/ A291 junction. Queuing traffic affects adjacent junctions and can extend 1km in peak periods. The A28 road currently carries 20,000 vehicles per day, but with 6 trains passing per hour, the level crossing is closed for up to 20 minutes/hour during peak times, causing severe congestion to trips along the A28. This level of congestion is a major constraint on development to the north east of Canterbury.
- 3.4 Through tackling this congestion pinch point and increasing the capacity of this part of the network, the Project will unlock new development sites to the North East of Canterbury, delivering 4,220 new homes and 1,700 jobs.
- 3.5 The scale of development unlocked by the Project includes residential development at the following sites:
- 3.5.1 Broad Oak Farm and Sturry – 1106 homes;
  - 3.5.2 Hoplands Farm, Hersden – 250 homes;
  - 3.5.3 Colliery Site, Hersden – 370 homes;
  - 3.5.4 North Hersden – 800 homes;
  - 3.5.5 Other sites in the north eastern quadrant of Canterbury District
- 3.6 Since the approval of the business case by the Board in June 2016, there have been no substantial changes to the Project scope, although some enhancements have been made to the Project design to incorporate feedback received by Kent County Council (KCC) through public consultation.
- 3.7 The developers/ landowners for the residential and commercial development sites which will be unlocked through the delivery of the Project are due to provide sizable funding contributions towards the delivery of the Project, as detailed below. These funding contributions are being made as a S106 funding contribution per residential unit plot completed. The developers are also responsible for the delivery of the spine road, as shown in Figure 1.
- 3.8 The Project was approved by the Board on the 24<sup>th</sup> June 2016 for the award of £5.9m LGF. At the stage of the Project being approved, Project risks were identified by the SELEP Independent Technical Evaluator (ITE) regarding the cost and deliverability of the Project, particularly considering the interaction with Network Rail.
- 3.9 Furthermore, risks have been identified in relation to the security and timing of the expected private sector funding contributions to the Project. An update on these Project risks is provided through this report.

## **4. Project Cost and Funding**

- 4.1 The Project cost estimate for the delivery of the bridge over the railway was £28.6m within the original business case in 2016. This cost has now been

updated and is currently forecast at £29.6m and includes the proposed alterations to the A28/A291 junction.

- 4.2 In both the original and updated Project cost, the cost of delivering the spine road through the development site has been excluded, as these costs will be met in full by the developer. The construction of the spine road will also be undertaken by the developer.
- 4.3 To date, £1.109m LGF has been spent on the delivery of the Project. In addition to the £5.9m LGF award to the Project, three developer funding contributions are due to be made to fund the remaining project cost. These developer contributions are being made by three different developers from sites in the vicinity of the Project, as detailed within the confidential appendix.
- 4.4 As a result of the project development work which has been undertaken over the last three years, there is now greater cost certainty than when the Project was previously considered by the Board.
- 4.5 The detailed cost breakdown has been updated and refined to reflect Project progress and the revised programme. This includes allowances for Network Rail costs, inflation and risk, as determined through a Quantified Risk Assessment (QRA). This cost estimate has been prepared with knowledge of the costs involved in working with Network Rail through previous projects such as the East Kent Assess and Rushenden Relief Road. The risk for the need to provide land for flood storage compensation has been reduced, following acceptance by the Environment Agency of the Hydraulic Modelling of the Stour and the impact of the new road.

## **5. Project delivery update**

- 5.1 The original Project business case set out the intention to commence site mobilisation work in October 2019 and to complete the Project by October 2021.
- 5.2 The delivery of the Project has been slower than anticipated due to the interdependency between the Project and the planning applications for the residential/ commercial development which is associated with the Project. Project delays have also been experienced through the development of the environmental impact assessment (EIA), as stakeholder feedback has been considered and used to enhance the Project design work.
- 5.3 The interdependencies between the Project and the housing developments are complex and any resolution by Canterbury City Council to grant planning permission will be subject to the application for the relief road (the Project) being granted by KCC.
- 5.4 The outstanding planning applications, for the housing developments (being decided by Canterbury City Council) and the Project (being decided by KCC), are also subject of a joint Appropriate Assessment (AA) being considered as part of the planning application and being agreed by Natural

England. The AA is being prepared for Natural England's consideration and approval.

- 5.5 Natural England have provided a formal response to the most recent consultation on the KCC Planning Application seeking further clarification on a number of issues, primarily;
- 5.5.1 Clarification of impact of the drainage design on the habitat of a population of Desmoulins Snail
  - 5.5.2 Impact of the use of road salts used in winter maintenance on the Desmoulins Snails
  - 5.5.3 Impact of the use of road salts used in winter maintenance on the Water Quality of the River Stour
- 5.6 Further informal discussions have taken place with Natural England to better understand their concerns and the best way to resolve the issues. A formal response has been prepared and will be issued to KCC planning and Natural England before the Board meeting on 14 February 2020. A verbal update will be provided by KCC during the meeting.
- 5.7 A joint AA is being progressed because the housing developments and the Project are intrinsically linked and the cumulative impacts on the natural environment need to be considered. KCC and Canterbury City Council are working together to produce the AA in time for the housing applications to be reported to the Canterbury City Council planning committee on 19<sup>th</sup> February 2020. The AA will also allow KCC to progress the planning application for the road scheme which is scheduled for the KCC planning committee on 1<sup>st</sup> April 2020.
- 5.8 It is now anticipated that site mobilisation works will commence in February 2021, with the completion of the Project by March 2023. This is on the basis that the developer contributions are in place and that the land required to deliver the Project can be acquired voluntarily. Section 6 below provides further details on these Project risks.
- 5.9 Though the LGF would be spent before the other funding sources, on costs such as land acquisition, it is expected that due to the latest delays and the current pause on LGF spend, that the full LGF award to the Project will not be spent in full prior to the end of the Growth Deal (31<sup>st</sup> March 2021).
- 5.10 The conditions which need to be satisfied for LGF spend to be permitted by the Board beyond the 31<sup>st</sup> March 2021 are detailed below, along with information about how the conditions will be met by the Project:
- 5.10.1 A clear delivery plan with specific delivery milestones and completion date to be agreed by the Board;

There is a clear delivery plan in place for the Project and has been shared with the SELEP Secretariat. Once the planning consents have been granted for the Broad Oak and Sturry sites, as well as the KCC planning for the Project itself; the risk of not being able to deliver the Project in line with this plan will be mitigated.

Whilst there remains a risk that a Compulsory Purchase Order (CPO) may be required, the timescales for the CPO have been factored into the delivery programme.

- 5.10.2 A direct link to the delivery of jobs, homes or improved skills levels within the SELEP area;

The Project is integral to the delivery of the Canterbury Local Plan adopted in July 2017. It is necessary to deliver the allocation of 2526 new homes at Sturry, Broadoak and Hersden. It also supports over 3000 homes at Herne Bay which are identified within the Local Plan.

- 5.10.3 All funding sources identified to enable the delivery of the project. Written commitment will be sought from the respective project delivery partner to confirm that the funding courses are in place to deliver the project beyond the Growth Deal;

The funding strategy is in place to deliver the Project, and once the planning consents have been granted this will be formalised through the S106 agreements with the Developers.

- 5.10.4 Endorsement from the SELEP Strategic Board that the funding should be retained against the project beyond 31<sup>st</sup> March 2021;

This was endorsed by the Strategic Board on 31<sup>st</sup> January 2020

- 5.10.5 Contractual commitments being in place with construction contractors by 31<sup>st</sup> March 2021 for the delivery of the project;

The procurement strategy is for a design and build contract which will be awarded in Spring 2020. The procurement has commenced with expressions of interest received and assessed. A list of preferred suppliers with Network Rail experience has been prepared. The tendering process will commence in March2020 once the planning applications for the Sturry and Broad Oak developments have been determined and, on the assumption, that the Sturry link road will be determined.

If the planning consent is granted, as per the timescales set out in section 5.7, it is expected that site mobilisation works will commence in February 2021 for the construction of the Project between April 2021 and February 2023.

**6. Project risk**

- 6.1 The most significant Project risk is the availability of the private sector funding contributions towards the delivery of the Project. As detailed in Appendix 1, potential options have been identified to manage the cash flow position and to

secure developer contributions which have been identified towards the delivery of the Project. However, this remains a substantial risk, as although all of the sites are allocated in the adopted Local Plan (July 2017), full planning consent has not yet been approved for any of the main three developers due to financially contribute towards the delivery of the Project.

6.2 Given the complex funding package for the Project, there are a large number of dependencies to secure the full local funding package required to deliver the Project. These dependencies include:

6.2.1 Planning consent being secured for the developments which are due to financially contribute to the delivery of the Project;

6.2.2 The pace of housing delivery for the other development sites which are financially contributing towards the delivery of the Project;

To help mitigate this risk, a spend profile has been prepared by KCC which shows the housing delivery and developers contributions compared against the spend profile. A forward funding model identified to cover any short fall.

6.2.3 A security bond being provided to Kent County Council to forward fund Source 1. The provision of a bond has been agreed in principal with the developer;

6.2.4 KCC securing a charge on the land to enable Kent County Council to forward fund Source 2. The provision of a land charge has been agreed in principal with the developer, however, details are still to be provided and agreed.

6.3 As the developers are also delivering the spine road to connect the bridge with the existing road network to the north east, then any delays to the developer's construction of the spine road will impact the opening date for the Project.

6.4 The Head of Terms agreement with the developer, who is constructing the spine road, sets out the requirement to deliver the spine road at the same time as the Project. As full planning consent has not yet been granted to this site then this remains a substantial Project risk. A detailed planning submission has been made for the spine road which will be determined as part of the application for the site on the 17<sup>th</sup> February 2020.

6.5 A Compulsory Purchase Order (CPO) inquiry may be required to secure the land to complete the Project. A land agent has been appointed to lead on land negotiations, and the landowners have been consulted during the design phase to enable their initial concerns to be mitigated through design amendments. However, if a CPO enquiry is required then this will add to the timescales for delivering the project and risks an increase in LGF spend beyond 31 March 2021.

- 6.6 To mitigate the risk of abortive LGF spend on the delivery of the Project, LGF spend is currently on hold.

## **7. Next steps and potential options**

- 7.1 Strategic Board agreed that all high risk Local Growth Fund (LGF) projects were to be considered by the Board by no later than June 2019, to determine whether satisfactory mitigation has been put in place to enable the high risk projects to progress, whether the Project should be put on hold and/or the LGF re-allocated.
- 7.2 At the meeting of the Board on 8<sup>th</sup> June 2019, the Board resolved:
- 7.2.1 To Agree that the Project is put on hold but the LGF remains allocated to the Project until Kent County Council (KCC) can provide assurance that the local funding package is in place to progress with the delivery of the Project.
  - 7.2.2 To Agree the requirement for a project update report to be received by the Board in September 2019 and at least every six months following this, to monitor the Project risk, unless the project is cancelled. These separate update reports will continue until the point that the Board is satisfied that the Project risks, have been sufficiently mitigated.
- 7.3 Since June 2019, individual update reports have been received by the Board at each meeting of the Board. There has been some progress made by Kent County Council towards developing the local funding package for the Project, as set out in Appendix 1.
- 7.4 There has also been progress through the planning process for the Project itself and the developments due to financially contribute towards the delivery of the Project. KCC remain confident that the private sector funding contributions will be secured to enable the delivery of the Project. However, there remains a substantial risk in relation to the timing of the local funding contributions.
- 7.5 At the last meeting of the Board in November 2019, the Board agreed that if satisfactory progress has not been made towards securing the full funding package by the next update to the Board on the 14<sup>th</sup> February 2020, the Board will be asked to consider the reallocation of LGF to new LGF3b projects.
- 7.6 Specifically, to demonstrate satisfactory progress, it was expected that by the next Board meeting on the 14<sup>th</sup> February 2020, the planning applications would have been determined:
- By Kent Council County for the delivery of the Project; and
  - By Canterbury City Council in respect of Broad Oak Farm and Sturry developments

7.7 These deadlines have not been achieved and it is now expected that the planning consent will be considered by Canterbury City Council for the developments at Broad Oak Farm and Sturry developments on 19 February 2020 and for the Project itself on the 1<sup>st</sup> April 2020.

7.8 As a result of this delayed timescale, the Board is asked to agree one of two options:

Option 1

7.8.1 **Agree** to reallocate the £4.791m unspent LGF from the Project to the next project on the LGF3b pipeline; and

7.8.2 **Agree** that there is compelling justification for SELEP not to recover £1.109m LGF spend to date, subject to the spend being accounted for by Kent County Council as a capital cost; **or**

Option 2

7.8.3 **Agree** that £4.791m unspent LGF will be automatically reallocated to LGF3b pipeline if planning consent is not secured by 1<sup>st</sup> April for:

7.8.3.1 the Broad Oak Farm and Sturry development; **and**

7.8.3.2 the Project itself.

7.9 Option 2 will provide additional time to enable the Project to be considered at the scheduled planning committee dates but will reduce the timescales available for alternative LGF3b projects to be considered by the Board and progress to delivery prior to the end of the Growth Deal. If the LGF were reallocated after 1 April 2020, it is unlikely that an alternative LGF3 project could be brought forward for funding consideration by the Board until at least 5 July 2020.

7.10 If the remaining £4.791m unspent LGF is withdrawn from the Project (Option 1), it is still expected that the Project will proceed, as the completion of the Project remains essential to the planning residential developments in North East Canterbury. However, the withdrawal of the LGF could potentially impact the viability of the development and the affordable housing allocation for the developments would be reduced or lost. If there was still a remaining viability issue then there would be further impacts of the S106 contributions such as towards education and health care.

7.11 Under Option 1, for the £1.109m LGF spend to date to remain allocated to the Project, KCC will be required to provide confirmation that the LGF spend to date remains a capital cost and the Project will still progress to delivery using other funding sources.

7.12 As KCC has not yet completed the delivery of the Project there are provisions under the Service Level Agreement, for the SELEP Accountable Body to recover the £1.109m LGF spend to date. However, it remains KCC's intention

to deliver the Project. If the unspent LGF is reallocated, it is expected that the Project would still progress utilising other funding streams, as set out in 7.10.

- 7.13 The Board is therefore asked to agree that SELEP should not recover the £1.109m LGF spend to date. This is on the basis that KCC continue to account for the LGF spend to date as a capital cost, which is a condition of the funding, and the Project will still be delivered using alternative funding sources.
- 7.14 Should KCC reach a point of agreeing that the Project will no longer progress to delivery, the £1.109m LGF spend to date would likely become a revenue cost and would therefore need to be returned to SELEP, as the grant conditions from central Government stipulate that LGF funding can only be spent on capital expenditure. Should this situation arise then the Board will be provided with an update.

## **8. Financial Implications (Accountable Body comments)**

- 8.1 The proposals for funding this Project are complex and currently the arrangements with each of the developers are unconfirmed, with varying degrees of associated risk.
- 8.2 Should the necessary funding or planning permissions not be secured, there is a risk that the Project may need to be cancelled and any LGF funding spent to date may no longer meet the conditions of funding. In these circumstances, under the terms of the Funding Agreement in place with KCC, the LGF spent to date may need to be returned to Essex County Council (ECC), as the Accountable Body, and reallocated through the SELEP investment pipeline.
- 8.3 It is noted that currently further LGF spend is paused on this project until the funding is secured. Given the complexities and size of the risks associated with this Project, on-going monitoring of the risks and dependencies is necessary, to support effective decision making with regard to the use of LGF.
- 8.4 All LGF is transferred to the sponsoring authority under the terms of a Funding Agreement or SLA which makes clear the circumstances under which funding may have to be repaid should it not be utilised in line with the conditions of the grant or in accordance with the decisions of the Board.
- 8.5 Under the terms of the SLA any abortive costs will become revenue and will need to be returned to the Accountable Body, Essex County Council, as the requirements of the grant agreement will no longer be met

## **9. Legal Implications (Accountable Body comments)**

- 9.1 There are no legal risks arising from the proposals set out in this report. If the Project is cancelled at a later date, the provisions set out with the SLA in place between ECC, as Accountable Body, and KCC will be activated, and ECC will work with KCC to recover the abortive revenue costs.

**10. Equality and Diversity implication**

- 10.1 Section 149 of the Equality Act 2010 creates the public sector equality duty which requires that when a public sector body makes decisions it must have regard to the need to:
  - (a) Eliminate unlawful discrimination, harassment and victimisation and other behaviour prohibited by the Act;
  - (b) Advance equality of opportunity between people who share a protected characteristic and those who do not;
  - (c) Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.
  
- 10.2 The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, gender and sexual orientation.
  
- 10.3 In the course of the development of the project business case, the delivery of the Project and the ongoing commitment to equality and diversity, the promoting local authority will ensure that any equality implications are considered as part of their decision making process and where it is possible to identify mitigating factors where an impact against any of the protected characteristics has been identified.

**11. List of Appendices**

- 11.1 Appendix 1 – Confidential appendix – developer contributions

**12. List of Background Papers**

- 12.1 Business Case for the A28 Sturry Link Road

**(Any request for any background papers listed here should be made to the person named at the front of the report who will be able to help with any enquiries)**

Role	Date
<b>Accountable Body sign off</b>  Stephanie Mitchener (On behalf of Nicole Wood, S151 Officer, Essex County Council)	6/2/20