

Forward Plan reference number: FP/AB/220

<b>Report title:</b> A28 Sturry Link Road Project Update	
<b>Report to Accountability Board on 7<sup>th</sup> June 19</b>	
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<b>Date:</b> 07.05.2019	<b>For:</b> Decision
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<b>SELEP Partner Authority affected:</b> Kent	
<b>Confidential Appendix</b> <b>This report has a confidential appendix which is not for publication as it includes exempt information falling within paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972, as amended.</b>	

## 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 Strategic Board has previously agreed that all high risk Local Growth Fund (LGF) projects should be considered by the Board by no later than this meeting of the Board, 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, as per the options detailed in Appendix 1.
- 1.3 The Project has previously been approved by the Board for the award of £5.9m Local Growth Fund (LGF) but is identified as high risk, due to the risk to the private sector funding contributions to the Project.

## 2. Recommendations

### 2.1. The Board is asked to:

#### 2.1.1. Agree one of the following Options:

- a. **Agree** that the Board is satisfied that sufficient mitigation has been put in place to enable the Project to progress; **or**
- b. **Agree** one of the three alternative options agreed by the Strategic Board:
  - b.1 Option 1 - Cancellation of the Project from the LGF programme due to being undeliverable within the Growth

Deal period and the LGF is reallocated through the LGF3b (LGF single pipeline development) process;

- b.2 Option 2 - The Project is put on hold but the LGF remains allocated to the Project until KCC can provide assurance that the local funding package is in place to progress with the delivery of the Project (**recommended option**); or
- b.3 Option 3 - The Project is put on hold and the LGF is reallocated through the LGF3b process, but the Project is prioritised for future funding opportunities, such as the Shared Prosperity Fund.

2.1.2 **Agree** the requirement for a project update report to be received by the Board at least every six months, 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, detailed in section 5 of this report, have been sufficiently mitigated.

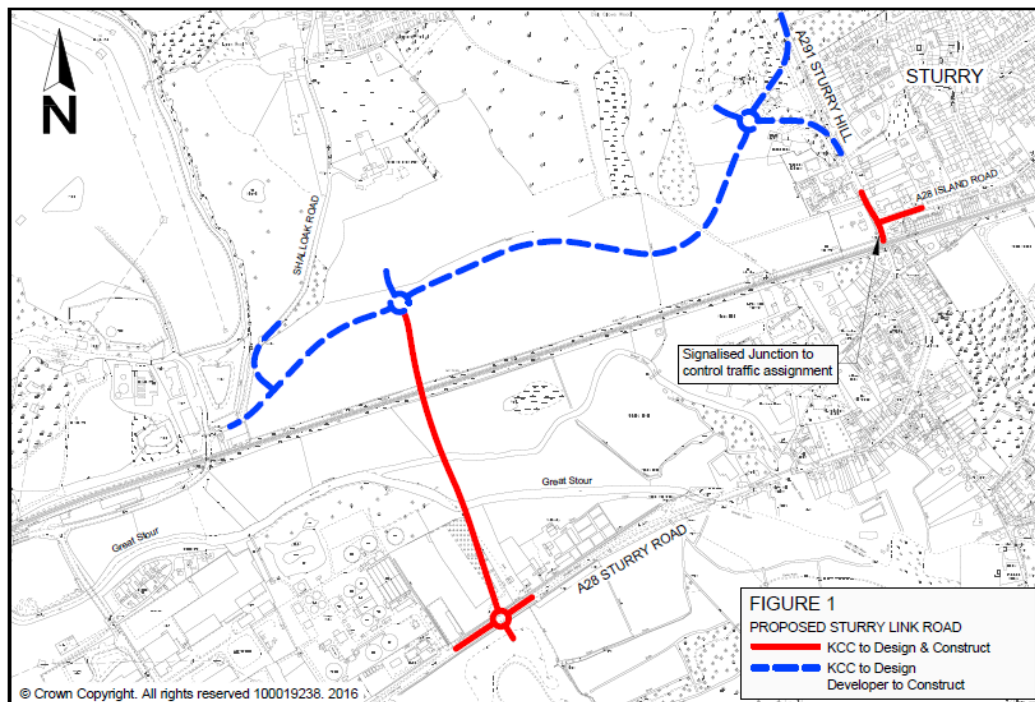
### 3. High Risk LGF Projects

- 3.1. At the Strategic Board in December 2018, it was agreed that the LGF projects which had been Red-Amber- Green (RAG) rated as Red due to the risk to LGF spend within the Growth Deal period must come back to the Accountability Board within the next six months to confirm that a delivery solution has been identified to progress the project or to agree one of the three options:
  - 3.1.1. Option 1 - Cancellation of the Project from the LGF programme due to being undeliverable within the Growth Deal period and the LGF is reallocated through the LGF3b (LGF single pipeline development) process;
  - 3.1.2. Option 2 - The Project is put on hold but the LGF remains allocated to the Project (recommended option); or
  - 3.1.3. Option 3 - The Project is put on hold and the LGF is reallocated through the LGF3b process, but the Project is prioritised for future funding opportunities, such as the Shared Prosperity Fund.
- 3.2. Further details on each of the options listed in section 6 of this report.
- 3.3. The Project has been identified as high risk due to uncertainty around the timing of the private sector funding contributions which are required to deliver the Project.

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

- 4.1. 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 will 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.
- 4.2. 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**



- 4.3. 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.

- 4.4. 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.
- 4.5. The scale of development unlocked by the Project includes residential development at the following sites:
  - 4.5.1. Broad Oak Farm and Sturry – 1000 homes;
  - 4.5.2. Hoplands Farm, Hersden – 250 homes;
  - 4.5.3. Colliery Site, Hersden – 500;
  - 4.5.4. Other sites in the north eastern quadrant of Canterbury District
- 4.6. 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 KCC through public consultation.
- 4.7. The developers/ land owners 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.
- 4.8. 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 in light of the interaction with Network Rail.
- 4.9. Furthermore, risks have been identified in relation to the security and timing of the expected private sector funding contributions to the Project.
- 4.10. A funding bid was submitted through the SELEP LGF3b pipeline development process, seeking a further £4.5m LGF towards the delivery of the Project, to help mitigate the funding risk in relation to the phasing of the developer contributions towards the Project.
- 4.11. The LGF3b bid for the Project was not prioritised by the Investment Panel to secure any additional LGF. As the application has not been successful, this further draws attention to the funding risk for this Project.
- 4.12. An update on these Project risks is provided through this report.

## **5. Project Cost and Funding**

- 5.1. 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.

- 5.2. 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.
- 5.3. To date, £1.073m LGF has been spent on the delivery of the Project, with a further £2.394m LGF expected to be spent on the Project in 2019/20. If the Project does not progress to delivery, this spend will become an abortive revenue cost and the LGF will need to be repaid to SELEP.
- 5.4. 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 three developer contributions are being made by three different developers from sites in the vicinity of the Project, as detailed within the confidential appendix.
- 5.5. 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.
- 5.6. 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 previously 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.
- 5.7. Confidential Appendix 1 sets out the current status of the developer contributions towards the delivery of the Project.

## **6. Project delivery update**

- 6.1. 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.
- 6.2. 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.
- 6.3. The planning application for the Project itself has been submitted and is due to be determined by Kent County Council (KCC) planning committee in September 2019.

- 6.4. It is now anticipated that site mobilisation works will commence in spring 2020, with the completion of the Project by December 2021. 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.
- 6.5. Through the LGF being spent before the other funding sources, on costs such as land acquisition, it is expected that the LGF award to the Project can be spent in full prior to the end of the Growth Deal (31<sup>st</sup> March 2021). This is based on the assumption that no Compulsory Purchase Order (CPO) is required.
- 6.6. At the point of the funding decision being considered by the Board in June 2016 the ITE raised concerns around the deliverability of the Project. This included concerns given the requirement for close working with Network Rail to enable the construction of the bridge over the railway.
- 6.7. There remains a requirement for a Basic Asset Protection Agreement (BAPA) to be put in place with Network Rail and formal approval of the design and construction methodology is required.
- 6.8. A Basic Service Agreement is now in place and initial payments have been made to Network Rail to cover their costs during the project.
- 6.9. The design of the Viaduct has been developed to avoid the need to work on Network Rail land and to minimise the disruption to Network Rail operations. This is a standard arrangement and considered a low risk.
- 6.10. In assessing tenders for the contractor and detail designer for the project, consideration will be given to the previous experience of the contractors in working with Network Rail on such projects. This will help ensure that they have the appropriate competencies to give added confidence in the delivery of the bridge with minimal impact on the railway.

## **7. Project risk**

- 7.1. The most significant Project risk is the availability of the private sector funding contributions towards the delivery of the Project. As detailed in Appendix 2, 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.
- 7.2. 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:

- 7.2.1. Planning consent being secured for the developments which are due to financially contribute to the delivery of the Project; and
  - 7.2.2. A security bond being provided to KCC to forward fund Source 1; and
  - 7.2.3. KCC securing a charge on the land to enable KCC to forward fund Source 2; and
  - 7.2.4. The pace of housing delivery for the other development sites which are financially contributing towards the delivery of the Project.
- 7.3. As the developers are also delivering the spine road to connect the bridge (funded through this LGF Project) with the existing road network to the north east, then any delays to the developers construction of the spine road will impact the opening date for the Project.
- 7.4. 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 in June 2019, so the risk will be reduced at this point.
- 7.5. A CPO enquiry may be required to secure the land required to complete the Project. A land agent has been appointed to lead on land negotiations, and the land owners 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 the LGF not being spent by the end of the Growth Deal.

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

- 8.1. There has been some progress made by KCC towards developing the local funding package for the Project, as set out in Appendix 2. 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. However, there remains a substantial risk in relation to the timing of the local funding contributions.
- 8.2. As part of this report, the Board is therefore asked to consider whether board members are satisfied that sufficient mitigation has been put in place to progress with the Project or alternative options should be considered. The alternative options available to the Board, include:
- 8.2.1. **Option 1** - Cancellation of the Project from the LGF programme due to being undeliverable within the Growth Deal period and the LGF is reallocated through the LGF3b (pipeline development) process.
  - 8.2.2. **Option 2** - The Project is put on hold but the LGF remains allocated to the Project (recommended option).

Under option 2, given the additional flexibility that has been indicated by the Ministry for Housing, Communities and Local Government to spent

LGF beyond the Growth Deal then the Board could consider placing the project on hold and pausing LGF spend on the Project until the local funding contributions have been confirmed.

This may provide a sensible approach to ensure that further abortive costs are not incurred, if the Project is unable to progress. Should the Board choose to support this option, it is recommended that the status of the project should be kept under review at least every six months.

KCC has already banked £1.45m of developer contributions which could be used to continue the design phase if the LGF spend is paused, which would ensure that progress could continue to be made with the risk mitigation for the scheme.

8.2.3. **Option 3** - The Project is put on hold and the LGF is reallocated through the LGF3b process, but the Project is prioritised for future funding opportunities, such as the Shared Prosperity Fund.

- 8.3. Should the Board support either Option 1 or 3 of the listed above, SELEP will work with KCC's finance team to understand how the LGF spend to date will be accounted for and to consider the stage at which the LGF spend to date would become an abortive revenue cost (resulting in the need to return the LGF to SELEP).
- 8.4. Should the Board agree Option 1, 2 or 3, any future LGF spend on the Project will be on the basis that KCC continue to accept the risk that if the Project does not progress then any abortive revenue costs will need to be met locally.
- 8.5. KCC remain confident that the private sector funding contributions will be secured to enable the delivery of the Project. At this stage, it is therefore recommended that the £5.9m LGF allocation remains allocated to the Project. However, learning from the lessons in relation to the A28 Chart Road project, considered under agenda item 19, the Board is advised to consider putting the project on hold (Option 2) and pause LGF spend on the Project until KCC can provide assurance that the local funding package is in place to progress with the delivery of the Project.
- 8.6. It is also recommended that the Board receives an update at its next meeting in September 2019 on the negotiations with the private sector developers. Following this, a separate update report will be provided to the Board on the Project at least every six months, until the Board is satisfied that the Project funding risk has been sufficiently mitigated.

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

- 9.1. 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.



- 9.2. 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.
- 9.3. It is noted that the recommendation is to pause any further spend of LGF 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.
- 9.4. The SELEP Accountable Body is responsible for ensuring that the LGF funding is utilised in accordance with the conditions set out by Government for use of the Grant.
- 9.5. Should the funding not be utilised in accordance with the conditions, for example, where abortive Project costs are transferred to revenue, the Government may request return of the funding from the Council, or withhold future funding streams.
- 9.6. 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.

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

- 10.1. 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.

## **11. Equality and Diversity implication**

- 11.1. 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.
- 11.2. The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, gender and sexual orientation.

- 11.3. 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.

## **12. List of Appendices**

- 12.1. Appendix 1 – Confidential appendix – developer contributions

## **13. List of Background Papers**

- 13.1. Business Case for the A28 Sturry Link Road
- 13.2. Accountability Board Agenda Pack 24<sup>th</sup> June 2016, including decision to award funding to the Project

**(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)**

<b>Role</b>	<b>Date</b>
<b>Accountable Body sign off</b>  Stephanie Mitchener (On behalf of Margaret Lee, S151 Officer, Essex County Council)	24/5/19