

Forward Plan reference number: FP/AB/296

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| Report title: A28 Sturry Link Road Project Update | |
| Report to Accountability Board on 18 September 2020 | |
| Report author: Rhiannon Mort, SELEP Capital Programme Manager | |
| Date: 20/08/2020 | For: Decision |
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| SELEP Partner Authority affected: 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This report has a confidential appendix which is not for publication as it includes exempt information falling within paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972, as amended.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.

2. Recommendations

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

Option 1

- 2.1.1 **Agree** the reallocation of £4.791m unspent LGF to the next project on the LGF pipeline, in accordance with the decision made by the Board in February 2020; and
- 2.1.2 **Agree** that there is compelling justification for SELEP Accountable Body not to recover the £1.109m LGF spent on the Project to date, provided it can continue to meet the LGF grant conditions for Capital expenditure; or

Option 2

- 2.1.3 **Agree** to extend the deadline until 20th November 2020 for planning consent to be secured for:
- 2.1.1.1 The Broad Oak Farm and Sturry development; and
- 2.1.1.2 The Project itself; and
- 2.1.4 **Agree** that written confirmation must be provided by Kent County Council to SELEP Accountable Body, by 12 February 2021, to confirm the funding package is in place for the Project, to enable the release

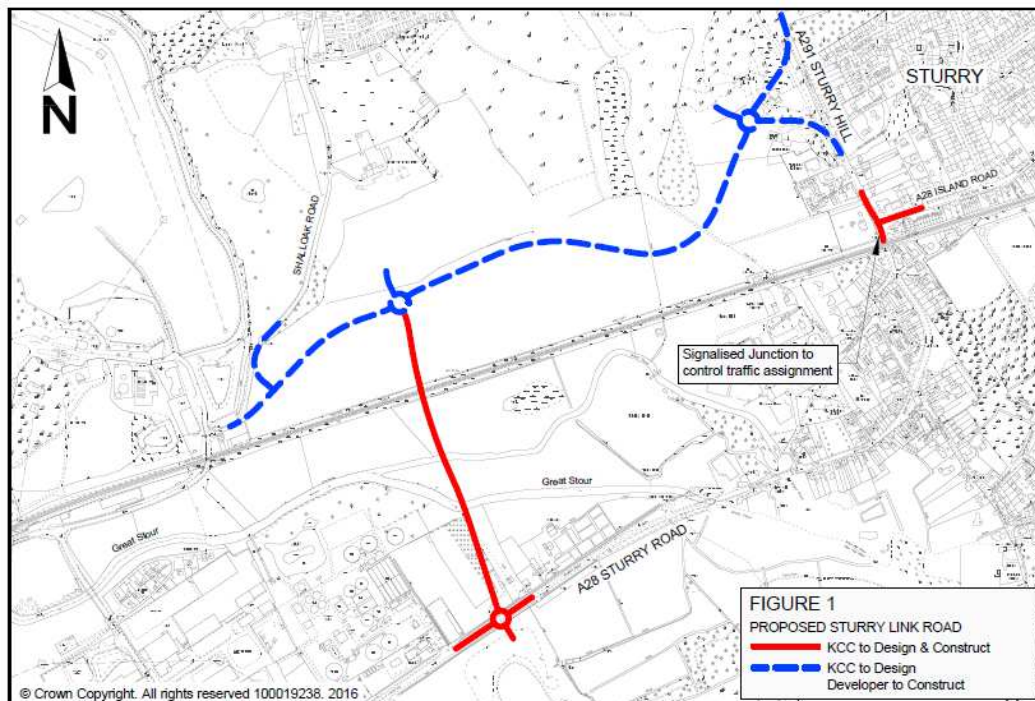
of the remaining £4.791m LGF to Kent County Council for the delivery of the Project beyond 31 March 2021.

- 2.1.5 **Note** that SELEP Ltd will also be required to approve the spend of LGF beyond the Growth Deal.

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 below show the sections of road included as part of the scope of the LGF Project.

Figure 1 A28 Sturry Link Road



4. Background

- 4.1 The Project was approved in June 2016 for the award of £5.9m LGF but is identified as a high-risk project, due to the risk to the private sector funding contributions to the Project.
- 4.2 As a result of the project risks, the Board has received individual update reports on the Project since June 2019 and deadlines have been set on a number of occasions for planning consent to be secured for the Project itself and for the residential developments for the main sites due to financially contribute to the Project.
- 4.3 Due to the exceptional circumstances which have arisen, as a result of COVID-19, the Board agreed to award flexibility to enable the planning

consent to be considered at the next opportunity once planning committee meetings resume and by no later than 18 September 2020. However, the Project has been unable to meet this revised deadline due to emerging issues relating to the planning consents, as set out in section 5.

- 4.4 In this report, the Board is asked to consider whether further flexibility should be awarded or if the unspent LGF should be reallocated to the next project on the LGF pipeline.

5. Project Cost and Funding

- 5.1 To date, £1.109m LGF has been spent by Kent County Council (KCC) on the delivery of the Project. In addition to the £5.9m LGF award to the Project, three developer funding contributions are expected 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. Appendix 1 also clarifies the current status in relation to each contribution including where agreements are subject to planning dependencies.

Table 1 Funding Breakdown (£m)

| Funding Source | Expenditure Forecast (£m) | | | | | | | Total |
|----------------------------------|---------------------------|--------------|--------------|------------|-------------|---------------|-------------------|-------------|
| | Prior to 2018 | 18/19 | 19/20 | 20/21 | 21/22 | 22/23 | 23/24 and onwards | |
| LGF | 0.8 | 0.262 | 0.038 | 0.6 | 3 | 1.2 | 0 | 5.9 |
| Developer Contributions | | | | | 9.8 | 6.163 | 7.737 | 23.7 |
| KCC Borrowing | | | | | 1.5 | 5 | -6.5 | 0 |
| Total Funding Requirement | 0.8 | 0.262 | 0.038 | 0.6 | 14.3 | 12.363 | 1.237 | 29.6 |

- 5.2 The delays in programme and uncertainty caused by the COVID -19 crisis has had an impact on the commencement of development, as a result of the delays in securing planning consent. The impact of COVID-19 could also delay the payment dates for development contributions to be made to the Project. Whilst KCC remain committed to the funding model, set out in Appendix 1, the delayed payment for developer contribution could result in additional forward funding being required by KCC.
- 5.3 No change to the total Project cost has been reported to date as a result of the delays or increased delivery risk related to COVID-19. If such cost increases are identified, the onerous will be on the developers to meet these increased costs.

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. It is now proposed that the Project will open to traffic in February 2024.

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- 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 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.
- 6.4 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.
- 6.5 Positive steps have been made in early September 2020 towards agreeing the AA, but previously delays to the AA meant that the planning applications could not be determined in June/July 2020, to achieve the deadline previously set by the Board.
- 6.6 Once Natural England formally accept the AA, there are no other foreseen barriers to the determination of the planning application for the Project and associated developments once the planning committee meetings at Kent County Council and Canterbury City Council resume.
- 6.7 It is now intended that the AA will be signed off by the end of September 2020. This will enable the planning application for the two main residential developments to be considered by Canterbury City Council in October 2020.
- 6.8 As the planning consent for the Project itself is not intended to be considered by Kent County Council until the residential developments have been considered, the next opportunity for the planning application for the Project to be considered is 4 November 2020. If the consideration of the application by Canterbury City Council is delayed, this will further delay the consideration of the Project by KCC Planning Committee.
- 6.9 Based on the latest Project delays, it is now anticipated that construction will start in January 2022, with the completion of the Project by November 2023. The key project milestones are summarised in Table 2 below. 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.

Table 2 – Project Milestones

| Key Milestones | Updated milestones |
|--|--------------------|
| Planning | November 2020 |
| Procurement and award of design and build contract | April 2020 |
| Detailed Design | Oct 2021 |
| Land acquisition | November 2021 |
| Construction start | January 2022 |
| Construction complete | November 2023 |
| Open to traffic (including developer portion) | February 2024 |

- 6.10 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, the full LGF award to the Project will not be spent in full prior to the end of the Growth Deal (30 September 2021; as extended by SELEP Ltd in April 2020).
- 6.11 The conditions which need to be satisfied for LGF spend to be permitted by the Board beyond 30 September 2021 are set out in Appendix 2. Three of the five conditions have been met but written confirmation is required from KCC to confirm that the funding sources have been secured to deliver the project and updated endorsement is required from SELEP Ltd for LGF spend beyond 31 March 2021.

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 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. 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:
- 8.2.1 Planning consent being secured for the developments which are due to financially contribute to the delivery of the Project;
 - 8.2.2 The pace of housing delivery for the other development sites which are financially contributing towards the delivery of the Project;

Based on the expected pace of housing delivery, the developer contributions will not immediately be available to enable the delivery of the Project as per the current programme.

A forward funding model has been identified to cover any short fall in which KCC will forward fund the developer contributions to the Project, in advance of the developer contributions being paid. As this pace of housing delivery may slow, due to the impact of COVID-19, this will likely further delay the developer contributions to the Project, thereby increasing the duration of the forward funding by KCC.

The likely borrowing costs will be costed by KCC over the next few months, to ensure the current funding model remains viable. If the Board agree that the Project should retain its full LGF allocation, the outcome of this assessment will be considered as part of the next update report to the Board in November 2020.

- 8.2.3 A security bond is being provided to Kent County Council to forward fund Source 1, as set out within the confidential appendix. The provision of a bond has been agreed in principal with the developer;
 - 8.2.4 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.
- 7.3 As the developers are also delivering the spine road, to connect the bridge with the existing road network to the north east, any delays to the developer's construction of the spine road will impact the opening date for the Project.
 - 7.4 The draft 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, 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 October 2020, subject to gaining Natural England agreement on the developers proposals to mitigate the water quality impacts on the river Stour.
 - 7.5 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. Once the planning has been confirmed, KCC will be in a better position to progress negotiations, with the intention of acquiring the land through voluntary negotiations.
 - 7.6 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 30 September 2021.

KCC intend to run the CPO in parallel with the negotiations to reduce the impact on the construction programme.

8. Next steps and potential options

8.1 LGF spend on the Project has been placed on hold since July 2019, whilst Kent County Council seek to address the project risks.

8.2 The main barrier to the Project's ability to proceed relates to planning consents having not been secured for the Project, nor for the main residential developments due to financially contribute. There also remain considerable risks, as Kent County Council are not currently in a position to provide confirmation of the match funding and a CPO may also be required.

8.3 With these risks in mind, the Board is asked to agree one of two options:

Option 1

9.3.1 **Agree** the reallocation of £4.791m unspent LGF to the next project on the LGF pipeline, in accordance with the decision made by the Board in February 2020; and

9.3.2 **Agree** that there is compelling justification for SELEP Accountable Body not to recover the £1.109m LGF spent on the Project to date, provided it can continue to meet the LGF grant conditions for Capital expenditure; or

Option 2

9.3.3 **Agree** to extend the deadline until 20th November 2020 for planning consent to be secured for:

8.3.3.1 The Broad Oak Farm and Sturry development; and

8.3.3.2 The Project itself.

9.3.4 **Agree** that written confirmation must be provided by Kent County Council to SELEP Accountable Body to confirm the funding package is in place for the Project by 12 February 2021, to enable the release of the remaining £4.791m LGF to Kent County Council for the delivery of the Project beyond 31 March 2021.

9.3.5 **Note** that SELEP Ltd will be required to approve the spend of LGF beyond the Growth Deal.

8.4 At the last meeting of the Board, the Board were advised against awarding further extensions to the deadline for planning consent to be secured beyond the September 2020 extension. For SELEP to remove the hold on LGF project spend and transfer the remaining LGF allocation for the project by the end of 2020/21, SELEP will require firm confirmation that the full funding package is in place to deliver the Project. There remain a number of hurdles to overcome before this assurance can be provided, as set out in section 5.

- 8.5 If the Project is unable to proceed and an alternative project is brought forward, SELEP must be in a position to demonstrate to Government that the funding is contractually committed and can be spent on the new project by the end of 2020/21. Allowing a further extension to the deadline will reduce the amount of time available for an alternative project to be brought forward.
- 8.6 If the remaining £4.791m unspent LGF is withdrawn from the Project (Option 1), it is still expected that the Project will proceed and be funded through development contributions, 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.
- 8.7 Under Option 1 for the £1.109m LGF spend to date not to be recovered, KCC have provided confirmation that the LGF spend to date would remain a capital cost and the Project would still progress to delivery using other funding sources.
- 8.8 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 6.14.
- 8.9 The Board, under Option 1, 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.
- 8.10 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 would no longer be met; it is a stipulation from Central Government that LGF funding can only be spent on capital expenditure. Should this situation arise then the Board will be provided with an update.
- 8.11 Should the Board agree to provide a further extension to the deadline for planning consent to be secured, as per Option 2, Strategic Board approval will also be required in October 2020 to enable the spend of LGF beyond the Growth Deal period.
- 8.12 The Project was considered by the Strategic Board in January 2020, but subsequent delays to the delivery schedule, of greater than six months, means that the Strategic Board are required to review the Project.

- 8.13 If this approval is not granted by the Strategic Board, the LGF contribution to the Project will be limited to the value of the LGF which can be spent on the Project by the end of the Growth Deal period.
- 8.14 Kent County Council will also be required to provide the SELEP Accountable Body with written confirm, by 12 February 2021, to confirm that the funding package is in place for the Project, to enable the release of the remaining £4.791m LGF to Kent County Council for the delivery of the Project beyond 31 March 2021.

9. Financial Implications (Accountable Body comments)

- 9.1 The proposals for funding this Project are complex and currently not all arrangements with the developers are unconfirmed, and have 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 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.
- 9.4 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.
- 9.5 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
- 9.6 It is noted that the Project does not currently meet the five conditions of spend beyond the Growth Deal as agreed at the Strategic Board in February 2019. For the project to meet the five conditions it is necessary for;
 - 10.6.1 KCC to provide written confirmation to confirm the availability of the all local funding sources
 - 10.6.2 The Strategic Board to consider the Project at the October 2020 meeting, and give endorsement that the funding should be retained against the project beyond 31 March 2021
- 9.7 Option 2 of this report's recommendations states that KCC must provide written confirmation to SELEP Accountable Body to confirm the funding

package is in place for the Project by 12 February 2021. If KCC are unable to confirm the funding by this time then there is a risk that SELEP will be unable to demonstrate spend by 31 March 2020.

- 9.8 As part of the LGF programme review to Central Government in June 2020, the Accountable Body and SELEP reported spend in full of the LGF programme by 31 March 2020, either through deliverability of the projects or using the Option 4 mechanism. The delay highlighted in 8.7 presents a risk that SELEP and the Accountable Body will be unable to evidence project spend by the end of the Growth Deal. The Project will be considered as part of an overall LGF programme review at the October 2020 meeting of the Strategic Board, in which they will be asked to consider LGF projects deemed high risk. These projects will need to seek continued endorsement from the Board as to the viability of their delivery.

10. Legal Implications (Accountable Body comments)

- 10.1 There are no legal implications 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
12.2 Appendix 2 – LGF spend beyond the Growth Deal

13. List of Background Papers

13.1 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 |
|--|-------------|
| Accountable Body sign off Peter Shakespear (On behalf of Nicole Wood, S151 Officer, Essex County Council) | 08/09/20 |