

<b>Report title:</b> Bexhill Enterprise Park North Project Update	
<b>Report to Accountability Board on 18<sup>th</sup> September 2020</b>	
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<b>Date:</b> 20 <sup>th</sup> August 2020	<b>For:</b> Decision
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<b>SELEP Partner Authority affected:</b> East Sussex	

## 1. Purpose of report

- 1.1 Updates on the delivery of the Bexhill Enterprise Park North project (the Project) were provided to the Accountability Board (the Board) in February and July 2020. The updates set out the current planning position and intended next steps, following the decision by Rother District Council planning committee to refuse the reserved matters application for the site. The decision to refuse the reserved matters application presents a significant deliverability risk to the Project and therefore the Board will be provided with regular updates on the Project whilst work continues to address this risk.
- 1.2 The purpose of this report, therefore, is for the Board to receive a further update on the delivery of the Project and to set out the delivery options currently under consideration.

## 2. Recommendations

- 2.1 The Board is asked to:

- 2.1.1 **Note** the latest position on the delivery of the Project;

- 2.1.2 **Agree** one of the following two options:

### Option 1

- 2.1.2.1 **Agree** that the Project remains on hold until the planning appeal has been concluded and, if successful, planning consent has been granted;

- 2.1.2.2 **Agree** that LGF spend on the delivery of the Project, beyond the £440,000 already transferred to East Sussex County Council, should remain paused until the planning appeal has been concluded and, if successful, planning consent has been granted; and

- 2.1.2.3 **Agree** that if the planning appeal is unsuccessful that the full £1.94m LGF allocation will be returned to SELEP for reallocation through the LGF project pipeline **OR**

#### Option 2

- 2.1.2.4 **Agree** that the £1.94m LGF currently allocated to the Project should be reallocated to the next project on the LGF project pipeline.

### **3. Background**

- 3.1 The Project was identified by the Investment Panel as a priority through the LGF3b pipeline development process and was approved by the Board on 7<sup>th</sup> June 2019 for the award of £1.94m LGF.
- 3.2 The Project will deliver the site and servicing infrastructure required to access individual development plots within Bexhill Enterprise North from the North Bexhill Access Road. Delivery of this infrastructure will directly enable development on the site to proceed with the benefit of access and will enable private sector investment. Further information regarding the Project can be found in Appendix A - LGF Project Background Information.
- 3.3 In October 2019, the decision was taken by Rother District Council to refuse the reserved matters application for the site. The application was refused for a number of reasons including: unacceptable phasing of the development, lack of master-planning for the site, poor design, impact on landscape character, detrimental impact on existing protected trees and failure to mitigate impacts on biodiversity. An appeal has been submitted to the Planning Inspectorate in relation to the refusal of this application.
- 3.4 Following the previous updates provided to the Board in February and July 2020, which set out the significant deliverability risks faced, LGF spend on the Project is currently paused until such time as planning permission has been granted.
- 3.5 Sea Change Sussex, as scheme promoter, have been working to identify other routes through which delivery of the LGF funded elements of the wider project can be accelerated, allowing delivery of the Project whilst awaiting the outcome of the ongoing planning appeal in relation to the wider development planning application.
- 3.6 This report sets out the options considered for progressing delivery of the Project.

**4. Option 1 – Project remains on hold until the planning appeal has been resolved**

4.1 Following delays encountered as a result of the COVID-19 pandemic, the Planning Inspectorate have now confirmed that the Planning Appeal hearing will commence on 19<sup>th</sup> January 2021. It is expected that the hearing will be held over two days, with the outcome of the appeal being known in late February 2021.

4.2 Assuming that the appeal is successful, Sea Change Sussex are anticipating that delivery of the enabling works will be able to commence onsite in early March 2021.

4.3 The full delivery programme is set out in Table 1 below.

Table 1: Bexhill Enterprise Park North Option 1 delivery programme

Milestone	Indicative date
Planning Appeal hearing start date	19 <sup>th</sup> January 2021
Estimated Planning Appeal hearing end date	21 <sup>st</sup> January 2021
Estimated date of Planning Appeal decision	22 <sup>nd</sup> February 2021
Letting of final construction contract (for enabling works)	25 <sup>th</sup> February 2021
Commencement of enabling works	1 <sup>st</sup> March 2021
Completion of enabling works	31 <sup>st</sup> May 2021
Commencement of employment workspace construction (estimated)	May 2021

4.4 Under this option the LGF funded enabling works will be delivered by the end of May 2021, with construction of the employment workspace expected to immediately follow.

4.5 In the update provided to the Board in July 2020, it was noted that the LGF funded site enabling works would be subject to a 9 month delivery programme. This programme included a full range of pre-development activities, including full design development, site clearance, site investigations and archaeological surveys. Whilst awaiting the outcome of the planning appeal, Sea Change Sussex have progressed and completed these workstreams which has resulted in a significantly reduced delivery programme of 3 months, which now solely reflects the time required onsite to deliver the enabling works. The scope of the works remains unchanged.

4.6 In April 2020, the Strategic Board agreed to extend the Growth Deal period by 6 months to 30<sup>th</sup> September 2021. This decision was taken due to the significant impact that the COVID-19 pandemic was having on local partners ability to deliver their LGF programmes.

4.7 In light of this decision, under Option 1 the LGF spend is currently expected to fall entirely within the Growth Deal period, as set out in Table 2 below.

Table 2: Bexhill Enterprise Park North Option 1 LGF spend profile

	2019/20	2020/21	2021/22	<b>TOTAL</b>
Original spend profile	£1.94m	-	-	<b>£1.94m</b>
Updated spend profile	-	£1.54m	£0.40m	<b>£1.94m</b>

- 4.8 In February 2020, in light of the significant deliverability risk faced by the Project, the Board agreed to pause LGF spend, beyond the £440,000 LGF already transferred to East Sussex County Council, until planning consent has been granted. It was agreed that this approach minimised the risk to East Sussex County Council should the planning appeal not be successful. This decision was re-endorsed by the Board in July 2020.
- 4.9 As it has not been possible to reduce the scale of the deliverability risk faced by the Project, as a result of the impacts of the COVID-19 pandemic, it is recommended under this option that LGF spend, beyond the £440,000 already transferred to East Sussex County Council, remains paused until the deliverability risk has reduced to an acceptable level.
- 4.10 It is acknowledged that adopting this approach to Project delivery may result in further delay to the completion of the Project and may increase the likelihood of spend extending beyond the end of the Growth Deal period, however, this option offers a greater level of certainty regarding the delivery of the employment workspace on the site.
- 4.11 The delivery of the planned employment workspace is dependent upon the successful conclusion of the planning appeal. By adopting this option, there will be greater certainty regarding the deliverability of the workspace prior to any further LGF funding being invested in the Project, thereby reducing the risk of abortive spend.
- 4.12 Whilst the LGF funding is allocated to the delivery of the enabling infrastructure, the successful delivery of the wider project is fundamental to the realisation of the benefits set out in the Project Business Case. The LGF funded element of the Project does not, in itself, create any significant benefits.
- 4.13 Should the planning appeal be unsuccessful, the full £1.94m LGF allocation will need to be returned to SELEP for reallocation through the LGF project pipeline.
- 5. Option 2 – Reallocation of LGF funding to the next project on the LGF project pipeline**
- 5.1 The £1.94m LGF allocation to the Project was approved by the Board on 7<sup>th</sup> June 2019, following consideration of the Project Business Case. At the time of the funding decision, it was expected that the LGF funded site enabling works would be completed by the end of March 2020 with the construction of the employment workspace commencing in Q1 2020.

- 5.2 As set out at 4.4 it is now expected that the site enabling works will not be completed until the end of May 2021 (subject to the outcome of the planning appeal). It is expected that construction of the employment workspace will begin shortly after the completion of these works, which will enable the realisation of the benefits set out within the Project Business Case.
- 5.3 Delivery of the Project has been significantly delayed as a result of the refusal to grant planning permission, and whilst alternative options have been considered to accelerate delivery of the LGF funded elements of the Project (as set out in Section 6 of this report), there remains a risk that the planning appeal will be unsuccessful meaning that it is not possible to bring forward the employment workspace on the site. This will result in a failure to realise the benefits set out within the Project Business Case.
- 5.4 Due to delays encountered by the Planning Inspectorate as a result of the COVID-19 pandemic, it is expected that it will not be possible for Sea Change Sussex to give any assurances regarding the delivery of the employment workspace until late February 2021. Should the planning appeal be unsuccessful, there will be no opportunity for the LGF funding to be reallocated to an alternative project prior to the official end of the Growth Deal period on 31<sup>st</sup> March 2021.
- 5.5 As part of the LGF review conducted by Government earlier this year, assurances were given by SELEP that the LGF funding would be spent in full by the end of 2020/21. It was anticipated that this would be achieved through the use of Option 4 capital swaps where required. If the LGF allocation to the Project is returned in February 2021 following the unsuccessful conclusion of the planning appeal, it will not be possible for SELEP to evidence full LGF spend at 31<sup>st</sup> March 2021 as required.
- 5.6 Due to the significant delays encountered and the high level of deliverability risk still faced by the Project, the Board may wish to agree that the £1.94m LGF allocation to the Project should be reallocated to the next project on the LGF project pipeline.

## **6. Other options considered**

- 6.1 In light of the significant deliverability risks currently faced by the Project, Sea Change Sussex have taken steps to identify alternative routes to Project delivery. Whilst details of a proposed alternative route to Project delivery are set out below, this option is not considered to be viable as it does not safeguard the realisation of the employment benefits set out within the Project Business Case.
- 6.2 Sea Change Sussex have submitted a separate Reserved Matters Application to Rother District Council in relation to the enabling infrastructure requirements for the site, which will be funded through the LGF. This application disengages the site enabling infrastructure from the wider development application which is currently under appeal.

- 6.3 In September, Sea Change Sussex will also submit the required documentation to discharge the remaining pre-commencement planning conditions that were attached to the outline planning permission.
- 6.4 It is anticipated that the Reserved Matters Application will be determined, and the planning conditions discharged, by 17<sup>th</sup> November 2020. This will allow construction of the enabling works to commence in late November 2020.
- 6.5 Under this option the LGF funded enabling works will be delivered by March 2021, and the full LGF allocation will therefore be spent within the original Growth Deal period. The development of the proposed employment workspace will be dependent upon the successful conclusion of the planning appeal.
- 6.6 This option presents the opportunity for accelerated delivery of the enabling infrastructure and ensures that the LGF allocation is spent in full by 31<sup>st</sup> March 2021. Furthermore, by disengaging the site enabling infrastructure from the wider development planning application, the level of planning risk for the LGF funded elements is reduced as a number of the grounds for refusal are no longer applicable or will be addressed within the infrastructure reserved matters application.
- 6.7 However, whilst this option provides greater certainty regarding delivery of the enabling infrastructure, it offers no certainty regarding the delivery of the proposed employment workspace on the site. The development of the workspace will remain dependent upon the outcome of the planning appeal.
- 6.8 The successful delivery of the wider project is fundamental to the realisation of the employment benefits set out in the Project Business Case. By adopting this option, there will be no certainty regarding the delivery of the employment workspace until the planning appeal is determined in late February 2021, by which time the enabling works will be nearing completion. Should the appeal be unsuccessful, and it is not possible to bring forward the planned workspace, no Project benefits will be realised in at least the short to medium term whilst further work is undertaken to address the grounds for refusal as set out by Rother District Council.
- 6.9 Adoption of this option would increase the risk of abortive costs, would not offer a solution in terms of securing delivery of the wider project and would offer no certainty regarding the realisation of the employment benefits set out within the Project Business Case. For these reasons, **this option is not recommended.**

## **7. Next steps**

- 7.1 If Option 1 is chosen by the Board, regular updates on the Project will continue to be provided until the Board are satisfied that the deliverability risk has been fully addressed and has reduced to an acceptable level.

- 7.2 If the Board choose to endorse Option 2, the funding will be reallocated to the next project on the LGF pipeline and the Project will be removed from the LGF programme.

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

- 8.1 In considering the recommendations of this report, the Board is advised to assess the risk of further delay in spend of LGF in ensuring best use of funding and securing value for money in the use of the grant. Delays in the delivery of the Project increases the risks associated with the overall Project completion within the Growth Deal period.
- 8.2 Delivery of the Growth Deal forms part of the Annual Performance Review (APR) assessment undertaken by Government in advance of confirming the annual LGF funding allocations. The slippage experienced by this Project detrimentally impacts on this delivery assessment, placing a risk over the outcome of this APR.
- 8.3 It should be noted that delivery of this project beyond the Growth Deal in March 2021 is subject to meeting the five conditions agreed by the Board on 15 February 2019, including obtaining endorsement from the Strategic Board. Delays in the delivery of this Project increase the risks associated with the overall Project completion within the Growth Deal period.
- 8.4 Should the Board agree to Option 1 to continue to pause the LGF spend on the Project, this potentially increases the risk of further delay to deliver the Project, however, given that planning permission has been refused and the outcome of the Planning Inspectorate appeal is unknown, this could be considered as the prudent approach to avoid the risk of abortive LGF spend to East Sussex County Council.
- 8.5 To mitigate these risks, the Board is advised to keep under review the delivery progress of this project and to take this into account with regard to any further funding decisions made
- 8.6 Under Option 1 in the recommendations, the potential release of £1.94m to be reallocated to the next project(s) on the LGF pipeline would be delayed until February 2021 when SeaChange Sussex would confirm the outcome of the planning application. Assuming the planning application is unsuccessful, this would not allow sufficient time for the funding to be reallocated and demonstrated as spent by 31 March 2021.
- 8.7 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 8.6 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.

- 8.8 If LGF spend on the Project becomes an abortive revenue cost, the funding must be repaid to SELEP by East Sussex County Council, under the terms of the Service Level Agreement with the SELEP Accountable Body.
- 8.9 Essex County Council is responsible for ensuring that the LGF funding is utilised in accordance with the conditions set out by Government for use of the Grant.
- 8.10 All LGF is transferred to East Sussex County Council under the terms of a Funding Agreement or SLA which makes clear that funding can only be made available when HM Government has transferred LGF to the Accountable Body.
- 8.11 The Agreements also set out 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. Legal Implications (Accountable Body Comments)**

- 9.1 As set out in the report, an agreement was entered into between ECC as the Accountable Body and East Sussex to transfer the funding. The agreement between the parties permit reallocation of funding to other LGF projects if approved by Accountability Board.

## **10. Equality and Diversity implications (Accountable Body Comments)**

- 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:
  - 10.1.1 Eliminate unlawful discrimination, harassment and victimisation and other behaviour prohibited by the Act;
  - 10.1.2 Advance equality of opportunity between people who share a protected characteristic and those who do not;
  - 10.1.3 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 their 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 were possible identify mitigating factors where an impact against any of the protected characteristics has been identified.

## **11. List of Appendices**

### **11.1 Appendix A - LGF Project Background Information**

**(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>  Peter Shakespear  (On behalf of Nicole Wood, S151 Officer, Essex County Council)	  08/09/20