

To the Chair and Members of Cabinet

APPROVAL TO ENTER INTO A FUNDING AGREEMENT WITH SHEFFIELD CITY REGION TO BE ABLE DRAW DOWN SCRIF APPROVED FUNDING FOR THE DELIVERY OF THE FINNINGLEY AND ROSSINGTON REGENERATION ROUTE SCHEME PHASE 2 PREFERRED ROUTE

Relevant Member(s)	Cabinet	Wards Affected	Key Decision
Joe Blackham		Finningley and Rossington	yes

EXECUTIVE SUMMARY

1. This report provides an update on progress to date of the FARRRS Phase 2 project. The scheme is a high priority within the Sheffield City Region Investment Fund (SCRIF) with £9.1m of SCRIF funding available to be drawn down. SCRIF funding is conditional on gaining planning consent, securing land and final business case approval.
2. Planning consent was delayed by an objection from the Woodland Trust but has now been granted. Land is currently being secured by agreement with landowners where possible and using compulsory purchase power as a last resort. Final business case approval is currently being sought from SCRIF.
3. A compulsory purchase order and accompanying side roads order (the Orders) have been made and objections have subsequently been received. This meant that not all of the land needed for construction could be secured potentially without a public inquiry. However, these objections are now substantially dealt with and so a firm date for a start on site can now be planned.
4. DMBC is one of 21 local authority members of the Midland Highways Alliance framework and following a competitive selection process using the framework Carillion has been asked to provide a price to construct the scheme. DMBC is not paying Carillion for providing the price and there is no obligation to enter into a construction contract, unless DMBC is content to proceed.
5. A full start cannot be made until DMBC has the right to enter either by agreement or by using compulsory purchase power. The main scheme start date likely to be late April 2017 with a construction duration of 10months, but early hedge and tree clearance will be carried out to avoid a potential impact on nesting birds.

6. To start the main works in April 2017 there is a possibility that land might need to be purchased before SCRIF funding is completely in place. Entering using compulsory powers would delay the start until July 2017 at the earliest which would push weather susceptible works into winter, increasing DMBC's costs.
7. There is a small discrepancy in the Orders, so it might be necessary to make a second minor compulsory purchase order, depending on the outcome of acquisition negotiations with a landowner, who didn't object. This will not delay the scheme.

RECOMMENDATIONS

8. Recommendations are set out below, for Cabinet to approve:
 - Delegate negotiation and completion of the terms of the funding agreement with SCRIF to the Director of Regeneration & Environment, in consultation with the Mayor and Chief Financial Officer & Assistant Director – Finance.
 - Authorise the drawn down of £9.1m SCRIF funding subject to:
 - i. securing title and rights to all of the land required to construct the scheme (by agreement and by compulsory powers); and
 - ii. the estimate of expenditure remaining within the budget set out below.
 - Authorise the making of a second compulsory purchase order to address the discrepancy in the Orders, if agreement can't be reached with the relevant landowner.

WHAT DOES THIS MEAN FOR THE CITIZENS OF DONCASTER?

9. FARRRS Phase 2 is the final section of the overall FARRRS project and will extend the A6182 Great Yorkshire Way from Parrots Corner to the Hurst Lane/Lincoln Green Way junction, completing the high quality link from the M18 to Doncaster Sheffield Airport and supporting further development in the airport business parks and the surrounding area.

EXEMPT REPORT

10. Background Paper: Stage 1B Business Case is not for publication as it contains commercially sensitive information and is exempt under paragraph 3 of Schedule 12A of the Local Government Act 1972, as amended (information relating to the financial or business affairs of any particular person, including the authority holding that information).

BACKGROUND

11. Cabinet has previously approved the submission of a planning application

and the 'making' of a compulsory purchase order to acquire land. The planning application was submitted on 6th June 2016. Planning permission was delayed due to a challenge by the Woodland Trust. The Trust requested that the Secretary of State for Communities and Local Government 'call in' the application for a public inquiry because of the impact of the scheme on Brooks Wood. The Secretary of State declined the call in request and planning permission was subsequently granted on 18th October 2016.

12. Planning consent was required before the compulsory purchase order and accompanying side roads order could be progressed and the Orders were 'made' by DMBC on 22nd November 2016. Compulsory purchase power cannot be used until 'confirmation' has been received from the Secretary of State for Transport. If objections from any directly affected party have been received, then the Secretary of State cannot confirm the Orders. If objections cannot be resolved and withdrawn, then a public inquiry is often the only recourse for determining the Secretary of State's decision whether to confirm or not.
13. Six objections to the Orders were made; one from Northern Powergrid, one from trustees of land held by a charity, two from landowners and two from farmer tenants. The objections from Northern Powergrid and the trustees have been withdrawn following clarification of a minor point and a minor addition to the scheme design to modify a current field access.
14. The two landowner and two tenant objectors were represented by a single land agent. Negotiations with the agent have been ongoing since January and terms for withdrawal of the objections are now been drafted. Once these are withdrawn the Secretary of State will be able to confirm the Orders. This will mean that DMBC will then be able to compulsory acquire any outstanding plots if agreement with owners cannot be reached.
15. As well as completing the statutory processes, SCRIF approval is also conditional on the provision of additional scheme information specifically limited additional economic analysis to complete the value for money case. Discussions are ongoing with SCRIF and the additional work analysis has been submitted for approval. The funding contract with SCRIF is also in preparation.
16. The current forecast of expenditure and funding is:

	2014/15 £k	2015/16 £k	2016/17 £k	2017/18 £k	2018/19 £k	Total £k
Prep & supervision	762	786	651	350		2,549
Land			20	380		400
Stats				184		184
Construction				6,850	250	7,100
Risk				295	25	320
Total	762	786	671	8,059	275	10,553

Funded by:						
DMBC	762	622	70			1,454
SCRIF		164	601	8,059	275	9,099
Total	762	786	671	8,059	275	10,553

17. Until the SCRIF funding contract is signed then ongoing expenditure is at DMBC's risk.

OPTIONS CONSIDERED AND REASON FOR RECOMMENDED OPTION

18. The scheme crosses several hedgerows and a section of Brooks Wood. Nesting activity significantly increases through the spring and summer months. If these areas are not cleared until the main works start, then the opportunity for avoiding a high risk of disruption and additional cost would be missed. Delaying clearance is, therefore, not recommended.
19. Negotiating early entry to commence the main works is a priority rather than waiting until entry can be taken using compulsory powers. A later start would have cost and programme implications due to pushing weather susceptible activities into the winter period. Not negotiating early entry means that the opportunity for carrying out those activities in the more productive summer months would be missed. Delaying the start of the main works is, therefore, not recommended.
20. Works could be delayed until early 2018 to avoid a winter start and before the next nesting season. A delay of 12 months is not considered to be a desirable option especially if there is an opportunity to make an earlier start. This option is, therefore, not recommended.

IMPACT ON THE COUNCIL'S KEY OUTCOMES

	Outcomes	Implications
	<p>All people in Doncaster benefit from a thriving and resilient economy.</p> <ul style="list-style-type: none"> • <i>Mayoral Priority: Creating Jobs and Housing</i> • <i>Mayoral Priority: Be a strong voice for our veterans</i> • <i>Mayoral Priority: Protecting Doncaster's vital services</i> 	<p>Contributes to supporting continuing business development at the airport.</p>
	<p>People live safe, healthy, active and independent lives.</p> <ul style="list-style-type: none"> • <i>Mayoral Priority: Safeguarding our Communities</i> • <i>Mayoral Priority: Bringing down the cost of living</i> 	<p>Reduces journey times and transfers traffic from the congested network. Enhances walking and cycling provision.</p>
	<p>People in Doncaster benefit from a high quality built and natural</p>	<p>New link built to modern standards.</p>

	<p>environment.</p> <ul style="list-style-type: none"> • <i>Mayoral Priority: Creating Jobs and Housing</i> • <i>Mayoral Priority: Safeguarding our Communities</i> • <i>Mayoral Priority: Bringing down the cost of living</i> 	
	<p>All families thrive.</p> <ul style="list-style-type: none"> • <i>Mayoral Priority: Protecting Doncaster's vital services</i> 	Connects people to jobs.
	Council services are modern and value for money.	None
	Working with our partners we will provide strong leadership and governance.	Working with SCRIF

RISKS AND ASSUMPTIONS

21. Until the objections received have been formally withdrawn there is still a risk that a public inquiry could be triggered. Given the position outlined above, this is considered to be a low risk.
22. Early entry to carry out clearance and then the main works might be cost prohibitive and that could lead to delay and disruption, with an associated increase in construction cost. This is considered to be a low to medium risk.
23. The Secretary of State may not confirm the Orders or may impose modifications to the Orders. This is considered to be a low risk given that the scheme accords with existing policy objectives.
24. Full Approval may not be granted to draw down SCRIF capital funding. In such case the scheme will have failed and any costs incurred will be abortive and classed as revenue expenditure. This is considered to be a low risk considering the discussions with SCRIF to date.
25. The project programme and milestones reflect the earliest delivery opportunity and assume full resources are available.

LEGAL IMPLICATIONS

26. In accordance with Section 111 of the Local Government Act 1972, a local authority shall have power to do anything (whether or not involving the expenditure, borrowing or lending of money or the acquisition or disposal of any property or rights) which is calculated to facilitate, or is conducive or incidental to, the discharge of any of their functions.
27. S1 Localism Act 2011 provides the Council with the so called general power of competence which allows a local authority to do anything which an individual may generally do.

28. The Council has to date carried out all the work to deliver FARRS2 from its own resources. This situation will continue until such time as a funding agreement is completed between the Council and Sheffield City Region for SCRIF funding of the project.
29. It is usual for the SCRIF not to issue a draft funding agreement until the Council has secured all of the land required to deliver the particular project. In this case the properties will be secured on confirmation of the Compulsory Purchase Order.
30. At present there are 4 outstanding objections to the CPO which have not yet been formally withdrawn. The CPO will not be confirmed unless these objections are withdrawn or there has been a public inquiry.
31. Even if the objections are withdrawn there is a small risk that the Secretary of State will not confirm the CPO if they do not consider it meets the statutory requirements.
32. In the circumstances any monies expended prior to the confirmation of the CPO and entering into the SCRIF funding agreement will be at risk to the Council
33. In addition the SCRIF funding agreement when issued is likely to include claw back provisions in the event that the outcomes of the development are not met, appropriately robust project management will be required to mitigate the risk of clawback and specific legal advice will be required going forward.
34. If access to the land is required prior to acquisition, either through negotiation or the CPO, then licence agreements should be entered into with the individual landowners.
35. The further Compulsory Purchase Order which may be required is for the mitigation of the effects of the new road and supplying alternative secondary access to the fields to the South of the new road. The Council has the power to make a compulsory purchase of land for this purpose under S246 Highways Act 1980. The Acquisition of Land Act 1981 prescribes the procedure to be followed and the order will require confirmation by the Secretary of State.

FINANCIAL IMPLICATIONS

36. The FARRRS Phase 2 project has the following budget included in the capital programme: -

	£m
Expenditure	<u>10.55</u>
Financed by: -	
SCRIF Grant	9.10

Of the above, only the Council Resources are secure, with the SCRIF progressing towards funding agreements. Preparatory work is well under way for the project, with projected spend to March 2017 being £2.22m which will exceed the secured resources by £0.77m. Current spending is therefore at risk of securing the SCRIF funding with signing of the funding agreement expected March 2017 subject to approval of this report and negotiation of appropriate terms and conditions. If the project does not go ahead then the majority of costs incurred to date would be abortive and require writing out to revenue, for which a suitable resource would have to be identified. It would also mean the opportunity to access £9.10m SCRIF grant might be lost, including any element required to finance actual expenditure beyond the secured Council funding.

Negotiation of the funding agreement and the subsequent administration of the terms and conditions must be undertaken with reference to Financial Procedure Rules; particularly rule E. External Arrangements, which sets out the Council's minimum requirements in relation to grant funding. Any negotiations must ensure that conditions of claw back are acceptable to the Council. The SCR have given prior confirmation that there is no claw back in relation to this project.

Approvals are currently in place to draw down Council funding for preparatory costs; however, in order to draw down the remaining budget, once all the funding is secure, a further ODR will be required before a formal commitment is entered into or a contract signed. Overall costs are still being finalised so the ODR will need to demonstrate an affordable scheme and be signed by the relevant Director and Chief Financial Officer in consultation with the Portfolio Holder (Finance & Corporate Services).

HUMAN RESOURCES IMPLICATIONS

37. Not applicable.

TECHNOLOGY IMPLICATIONS

38. Not applicable.

EQUALITY IMPLICATIONS

39. A Due Regard Statement was included with the previous report and is unchanged by this amendment.

CONSULTATION

40. This report has significant implications in terms of the following:

Procurement		Crime & Disorder	
Human Resources		Human Rights & Equalities	
Buildings, Land and Occupiers	x	Environment & Sustainability	
ICT		Capital Programme	x

BACKGROUND PAPERS

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