

**SURREY COUNTY COUNCIL****CABINET****DATE: 20 JULY 2021****REPORT OF CABINET MEMBER: MARISA HEATH, CABINET MEMBER FOR ENVIRONMENT****LEAD OFFICER: KATIE STEWART, EXECUTIVE DIRECTOR FOR ENVIRONMENT, TRANSPORT & INFRASTRUCTURE****SUBJECT: RIVER THAMES SCHEME COLLABORATION AGREEMENT PRINCIPLES****ORGANISATION STRATEGY PRIORITY AREA: GROWING A SUSTAINABLE ECONOMY SO EVERYONE CAN BENEFIT / ENABLING A GREENER FUTURE****Purpose of the Report:**

In October 2019, Surrey County Council Cabinet approved a commitment of £237M contribution to the River Thames Scheme which is being developed and delivered in partnership with the Environment Agency (EA). The approval of the contribution was conditional on a legal agreement (also known as a "Collaboration Agreement") being entered into by the Council and the EA that sets out the governance and financial arrangements for the delivery of the Scheme to its conclusion. The purpose of this report is to:

- Outline the principles to be used in the development of the Collaboration Agreement and any additional associated contracts and agreements as may be required as a natural consequence of the completing the Collaboration Agreement;
- Highlight the need for the delegation of specific authorities for decisions pertaining to the delivery of the Collaboration Agreement and the Scheme itself;
- Outline the high level proposed approach to governance of the delivery of the Scheme; and .
- Outline changes to the delegation of authority with respect to the decisions and actions relating to the Council's regulatory and planning functions as it pertains to the River Thames Scheme to avoid perceived conflict of interest.

**Recommendations:**

It is recommended that Cabinet:

1. Approves the principles proposed for the development of the Collaboration Agreement.
2. Agrees the delegation of authority to the Executive Director for Environment, Transport and Infrastructure, in consultation with the Cabinet Member for Environment and the Executive Director of Resources, to enter into the collaboration agreement and to take such actions and decisions necessary to facilitate the delivery of the Scheme within the approved budget.
3. Recommends to Council that all decisions and actions relating to the Council's regulatory and planning functions that pertain to the River Thames Scheme be delegated to the Director of Law and Governance in consultation with the Planning Group Manager.

## Reason for Recommendations:

The River Thames Scheme Collaboration Agreement will provide a sound legal basis for partnership working between the EA and SCC to deliver the River Thames Scheme.

However, development of the Agreement will take some time and will not be complete until the end of the calendar year. As such, Cabinet approval of a set of Collaboration Agreement principles will provide political support and direction for the negotiation of the full legal agreement, ensuring that it will represent the Council's best interests.

The delegation of the approval of the final Collaboration Agreement as set out in the recommendations will ensure that SCC decision making is as agile as possible and does not hold up progress on the Scheme.

In addition, Cabinet has previously approved, on 26 January 2021, the need to develop an approach to separate the exercise of the Council's functions as (i) a joint applicant to the DCO and (ii) its regulatory functions as a local planning authority to avoid a perceived conflict of interest. The final recommendation above puts this into action.

## Executive Summary

1. In October 2019, Surrey County Council (SCC) Cabinet approved investing £270M over 10 years to deliver the objectives of Surrey's Local Flood Risk Management Strategy. £33M of that investment has been identified to address the impacts of flooding across the County. The remaining £237M is to be SCC's financial contribution to the River Thames Scheme – a major flood defences and wider environmental scheme which is being developed and delivered in partnership with the Environment Agency. Since that original decision, the scope of the Scheme has reduced with the removal of the Royal Borough of Windsor and Maidenhead Channel; however, the section of Scheme that is within Surrey and the benefits related to it remain the same. The Outline Business Case (OBC) for the Scheme was approved by HM Treasury on 4 June 2021.
2. Cabinet's approval of the SCC contribution to the Scheme was conditional on a legal agreement, also known as the "Collaboration Agreement," being entered into by SCC and the Environment Agency (EA) that will set out the respective governance and financial arrangements for the delivery of the Scheme to its conclusion.
3. The core principles on which it is proposed the Collaboration Agreement will be developed and the proposed process for its final agreement are outlined below. It is proposed that the final agreement of the Collaboration Agreement be delegated to the Executive Corporate Director for Environment, Transport and Highways in consultation with the Cabinet Member for Environment and the Executive Director for Resources.

## Principles of the Collaboration Agreement (CA)

4. The principles of the Collaboration Agreement (CA) between the EA and SCC are designed to support sound and responsive decision making and will include:
  - **A recognition of the need to move forward at pace wherever possible:** This will mean including a clear timetable for development and implementation of the Scheme from now through to its construction;
  - **A 'one project team approach' between the Council and EA to delivery of the scheme:** The CA will set out clear roles, responsibilities and obligations of each party in respect of various aspects of the Scheme, and where appropriate, these activities will

be delivered through a joint team with a joint Executive Project Director and other supporting roles identified by the Council and EA and using project funding. Joint governance is being established to enable joint decisions within the scope of the project, including in progressing actions to develop and promote the development consent order (DCO), the asset strategy for the project, and the procurement strategy, amongst other aspects associated with delivery of the scheme;

- **A limitation of the Council's financial exposure:** The profile of the Council's spend will limit the Council's contribution to £25.08m up to Full Business Case, and the overall spend by the Council to the £237m agreed to by Cabinet in October 2019. Any cost overrun by the project requiring funding beyond the Council's agreed contribution would be subject to a further Cabinet decision and would only be considered after all other options to bring the cost of the project in scope were exhausted.
- **A recognition that there needs to be compliance with EA and SCC policy and procedures in delivery of the Scheme:** Whilst a joint approach will be taken to decisions needed to deliver the Scheme, it will be made clear in the CA that those decisions will need to comply with the Council's and/or EA's own policies and procedures as appropriate– for example, those relating to procurement, contracting, and employment. In addition, the Council's responsibilities as a highways authority are unaffected by the CA, and the normal policies that would apply to any project of this kind in respect of highways will continue and be unaffected by the CA.
- **Clear processes for dealing with dispute:** Whilst every effort will be made to ensure that disputes between the Council and EA are resolved consensually and through negotiation, there is always a possibility in any partnership that disputes arise that cannot be resolved. The CA will include a dispute resolution mechanism that will enable the Council and EA to handle disputes arising ;
- **A fair and equitable sharing of financial and contractual risk between the two parties,** pursuant to those various contractual agreements and appointments: The Council and EA have taken decisions as to their respective financial contributions, but the CA will need to clarify how risk is treated in respect of the project – both in terms of the use of any contingency but also any savings that may arise in respect of delivery of the project
- **Strong, responsive and agile governance:** Delivering in partnership effectively with the EA will require robust joint project governance, which will underpin and be covered by the CA. Further details of the proposed governance are covered in the next section.

### **Delegated Decision Making and Governance**

5. In order to provide robust strategic oversight of the delivery of the scheme, it is proposed that a **Strategic Delivery Board (SDB)** be established jointly with the EA to be responsible for managing the delivery of the Scheme
6. Delegations of authority from SCC and EA will be directly to their own separate directors who will then be jointly responsible for the decision making by the SDB.
7. The SDB will be responsible for ensuring the delivery of the main objectives set for the project by the two organisations. It will also take decisions in respect of the project budget as necessary, provided the project budget remains within the funding envelope. Any further changes to the profile of spend would be subject to Cabinet approval.

8. The responsibilities of the SDB would include but are not limited to making decisions in respect of the following:
- the terms and extent of the proposed DCO and any land to be acquired as appropriate;
  - 
  - engagement with the Project Sponsor Group (see below);
  - approval of the joint working group structure which will be required to support the SDB and the Project Director;
  - the appointment of a joint Executive Project Director for the Scheme
9. Along with the proposed SDB, there is already a **Project Sponsor Group** in place, which provides political leadership by partners to the Scheme. This Group, which is comprised of elected members and executive directors from all partners, will continue to operate. Underneath the Project Sponsor Group is the Programme Board which brings together the EA, SCC and district and borough partners at the delivery level.
10. In addition to the project governance, it is important that the Council ensures that its own governance is fit for purpose for delivery of the Scheme. Here it should be noted that the Council will have two roles in respect of the Scheme - (i) its role as a joint applicant to the DCO and (ii) its regulatory role as a local planning authority. In order to avoid a perceived conflict of interest between these roles, Cabinet has previously approved, on 26 January 2021, the need to separate the exercise of the Council's functions in respect of the Scheme between these two roles.
11. To enable this separation of functions, it is recommended that any decisions relating to the Council's regulatory role be delegated to the Director of Law and Governance. In addition, the officers working on the development and promotion of the Scheme itself will be managed separately from those responsible for discharging the Council's planning functions. A protocol establishing a "virtual ethical wall" between the two teams, and which makes clear that the team developing the scheme are treated as any client would normally be treated in respect of the county's planning function, will be put in place. The officers will be managed in a way that will avoid conflict of interest in carrying out their roles and responsibilities.
12. Once the project governance is in place SCC and the EA will work on further developing the design for the flood defences and wider environmental enhancements alongside drafting the Development Consent Order. Further consultation and engagement with residents and partners will begin later this year.

#### **Consultation:**

13. Discussions have taken place with senior officers at the EA regarding the approach to governance and risk sharing.
14. Officers from SCC's Finance and Legal teams have been consulted on the proposed principles. The Cabinet Member for Environment and the Cabinet Member for Highways and Infrastructure have also been consulted.

#### **Risk Management and Implications:**

15. There is a risk that the EA and its legal advisers don't agree to all or part of the CA principles, however this is being mitigated through ongoing discussions and sharing of the proposed 'principles' in advance of the submission of this report. Similarly, the length of

time to adopt the final CA could impact on aspects of the RTS programme that are due imminently such as contract drafting or preparation for stakeholder engagement. However, the ‘shadow’ governance already in place has enabled the scheme to progress well so far and therefore there is sufficient governance and process in place at this stage to continue making progress until the CA is formalised.

**Financial and Value for Money Implications:**

16. The contribution of £237M towards the River Thames Scheme was agreed by Cabinet in October 2019, subject to a legal agreement between SCC and the EA. The total cost of the scheme at OBC is £501m which includes 48% allocation for Optimism Bias and contingency.
17. The revised profile in Table 1 has been reported to the Capital Programme Panel as part of the review of the capital medium term financial strategy. This profile has been revised since the funding was originally agreed in order to minimise the financial exposure of the Council in the early part of the project and to reduce the Council’s borrowing costs which arise from its capital contribution.
18. The revised profile moves more of the Council’s spend into later years of the project, leading to a £130.0m reduction in the planned spend between 2020/21 and 2026/27 when compared to the Capital Programme approved by Council in February. This will produce a reduction in borrowing costs of circa £6.7m. The revised contribution profile and the benefit from re-phased borrowing and medium-term reduction in borrowing costs will be factored into the Medium-Term Financial Strategy refresh currently under way. Once the full contribution has been made, the subsequent annual borrowing costs will remain unchanged. As with all capital schemes, progress against spend will be reviewed and adjustment made as appropriate.

*Table 1 – River Thames Scheme SCC Contributions Profile*

20/21	21/22	22/23	23/24	24/25	25/26	26/27	27/28	28/29	29/30	<b>Total</b>
£m	£m	£m	£m	£m	£m	£m	£m	£m	£m	£m
£2.58	£2.5	£4.0	£8.0	£8.0	£30.0	£50.0	£50.0	£50.0	£31.9	£236.98

19. Approval of the CA principles, delegation to the Director for Environment, Transport and Infrastructure and the establishment of the Strategic Delivery Board will ensure that SCC is at the core of the Scheme decision making and can ensure value for money for Surrey constituents.

**Section 151 Officer Commentary:**

20. Although significant progress has been made over the last twelve months to improve the Council’s financial position, the medium term financial outlook beyond 2021/22 remains uncertain. The public health crisis has resulted in increased costs which may not be fully funded. With uncertainty about the ongoing impact of this and no clarity on the extent to which both central and local funding sources might be affected in the medium term, our working assumption is that financial resources will continue to be constrained, as they have been for the majority of the past decade. This places an onus on the Council to continue to consider issues of financial sustainability as a priority in order to ensure stable provision of services in the medium term.

21. The Section 151 Officer supports the recommended approach. The Council's contribution of £237m is factored into its Medium-Term Financial Strategy, and the revised phasing of the contribution over the life of the scheme will be taken account of as the Strategy is refreshed. The Collaboration Agreement will set out how the parties will share risks and liabilities, including any additional costs as the scheme is delivered. The Scheme budget includes significant contingencies, however, should costs increase any change to the Council's contribution would be subject to normal decision-making processes. As with any capital scheme, if the Scheme does not proceed some or all the costs incurred may need to be treated as abortive costs and savings met from the revenue budget.

#### **Legal Implications – Monitoring Officer:**

22. The report sets out the financial and contractual requirements of the Collaboration Agreement and the need to manage SCCs risks and liabilities pursuant to that agreement and associated contracts which will follow the completion of the Collaboration Agreement. Cabinet has previously authorised the expenditure of £237m for the Scheme. An agreement with the EA is necessary to set out the parties' roles and responsibilities and SCC will have greater control and influence over the process by being a joint party to various relevant contractual agreements. The governance process set out in the report and the Scheme's Strategic Delivery Board will be key to controlling SCCs risks and liabilities.

23. There is no change to SCC's financial or reputational risks associated with the DCO and the associated contracts beyond those previously agreed by Cabinet in October 2019 and January 2021.

#### **Equalities and Diversity:**

24. As this paper is specifically seeking a decision on the principles of the Collaboration Agreement between SCC and the EA as Joint Applicants for the River Thames Scheme DCO, the decision does not directly affect the scope of the Scheme, and as such an Equalities Impact Assessment has not been completed.

25. An Equalities and Diversity Impact Assessment will be produced for the Scheme in accordance with the Equalities Act 2010 as part of the pre-application process and during the pre-application phase, the Joint Applicants will be required to undertake full and thorough consultation with stakeholders and the community.

#### **Compliance against net-zero emissions target and future climate compatibility/resilience:**

26. The flood management measures proposed by this scheme are very important to strengthen resilience of communities from the higher flooding risk due to climate change. The Carbon impacts of all the options have not been assessed prior to the preferred options being chosen. Construction phase is likely to generate greenhouse gas emissions resulting from embodied emissions in materials, waste generation, electricity, fuel usage for transportation but the scale of the impact is not yet well known. During Construction to create diversion channels, due to altering land use stored carbon may be released from tree cover, wetlands, and Peatlands along the corridor. Options to minimise carbon impacts will be considered at the detailed design stage.

#### **Other Implications:**

27. The potential implications for the following council priorities and policy areas have been considered. Where the impact is potentially significant a summary of the issues is set out in detail below.

<b>Area assessed:</b>	<b>Direct Implications:</b>
Corporate Parenting/Looked After Children	No significant implications arising from this report.
Safeguarding responsibilities for vulnerable children and adults	No significant implications arising from this report.
Environmental sustainability	No significant implications arising from this report.
Public Health	No significant implications arising from this report.

### **What Happens Next:**

28. If Cabinet approves the principles of the Collaboration Agreement, the next steps are to finalise the Collaboration Agreement by end of calendar year 2021.
29. The Strategic Delivery Board will be established, and will set out to review and approve the terms of reference for the appointment of key personnel to manage the delivery of the Scheme, including the Executive Project Director; the Project Execution Plan; and start putting in place key contracts to develop and progress the Scheme.
30. Engagement and consultation with residents, groups and partner organisations will take place later this year.

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### **Report Author:**

Doug Hill, Flood and Climate Resilience Manager, 020 8213 2711

Carolyn McKenzie, Director for Environment, carolyn.mckenzie@surreycc.gov.uk

### **Consulted:**

Environment Agency

### **Background papers:**

[Surrey Flood Alleviation Programme – Joint applicant for the River Thames Scheme Development Consent Order](#)– SCC Cabinet 26 January 2021

[Funding Flood Risk Management in Surrey](#) – SCC Cabinet 29 October 2019

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