

COASTAL RISK MANAGEMENT PROGRAMME – REVISED PROCUREMENT OF A CONSTRUCTION CONTRACT TO DELIVER THE COASTAL DEFENCE IMPROVEMENTS: PRE DECISION SCRUTINY

Reason for the Report

1. A report titled 'Coastal Risk Management Programme – Revised Procurement of a Construction Contract to Deliver the Coastal Defence Improvements' is due to be considered by Cabinet at its meeting on the 22 September 2022.

Structure of Papers

2. The following Appendices are attached to this cover report:
 - **Appendix 1** – Cabinet Report September 2022.

Appendix 1, A and B to this report is exempt from publication on the basis that it contains information of the description set out in paragraphs 14 and 21 of Part 4 of schedule 12 A of the Local Government Act 1972 and in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

- **Appendix 1.** – Financial Implications
- **Appendix A** – Full Business Case Coastal Protection Scheme.
- **Appendix B** – Technical note on revised scheme.

Background

3. The Mott MacDonald, Rover Way Foreshore Coastal Defence Assessment, 2009 and Cardiff Council Coastal Erosion Risk Assessment, Atkins 2013 concluded an identified need to improve the condition of coastal defences in the River Rhydney and coast around Rover Way.
4. **Point 7** highlights the protection of 2,326 residential, 204 non residential sites

5. The original scheme has been revised as Welsh Government have confirmed they will not fund costs related to the Lamby Way Landfill site and infrastructure, as noted in **points 8 & 9**.
6. **Point 10** notes the proposed scheme will provide protection for a 1 in 200 year event and takes into account a climate change influence of 40%
7. Following a procurement exercise a successful, valid, tender was submitted however due to a variety of reasons the Contractor was unable to award the tender (**points 11 & 12**)
8. The outline business case (**points 13 – 15**), which was accepted by Welsh Government, clarifies the preferred option to improve coastal defence was Option 6 which would provide the following:
 - Rock revetment along the coast to manage erosion and wave overtopping
 - Sheet piling along Lamby Way Roundabout
 - Maintain earth embankments elsewhere and raise low points in earth embankments where required to reduce flood risk.
 - Rock scour protection added to Lamby Way Bridge.
9. **Points 16 – 34** relate to the revised business case and note in **point 21** that section 5 of the outline business case preferred option (Windsor Gardens and Parc Tredelerch) as not being at risk for 50 years and therefore not meeting Welsh Government criteria for funding currently.
10. **Points 23 & 24** indicate the revised plans that take into account Welsh Government not funding proposed protection of Lamby Way landfill and associated infrastructure (i.e. highways and solar farm) but maintaining the plans for protecting the identified residential, non-residential sites.
11. It is also noted that a flood gate will need to be installed to protect Cardiff Sailing Club, **point 25**.

12. The increase in costs are explained in **points 28 - 31**, and relate to the design taking into account a climate change influence of 40%, previously 30%, and the proposed defences being larger, longer and higher.
13. **Point 34** notes that to meet Welsh Government Coastal Risk Management Programme requirements construction needs to start before 31st March 2023.
14. The following are required before a funding letter from the Welsh Government will be provided, **points 35 & 36**:
 - Full Business Case with tendered costs for the works.
 - Planning consent.
 - Marine Licence (NRW). Received and dated 21st July 2022. Scheme to be considered at November Planning Committee
 - Copy of the published Coast Protection Notice and report on representations received.
 - Copy of Coastal Protection Act Approval.
 - Any other statutory consents required to carry out the works.
 - Confirmation Land agreements/Crown Estates agreements are in place to enable construction.
 - General Arrangement Drawings.
 - Tender Appraisal Report.
 - Copy of successful tender.
15. Moving forward the key dates to progress the scheme are detailed in **point 37**:
 - Submission of Final Business Case to Welsh Government – October 2022
 - Open tender for delivery of the coastal improvement project – October 2022
 - Award tender for construction contract – January 2023
 - Construction commencement – March 2023
 - Construction completion – August 2025
16. The procurement strategy is outlined in **points 38 - 43** and the tender assessment will be based 60 price / 30 quality / 10 social value split.

17. The final agreement with Welsh Government is outlined in **points 44 - 49**.
18. The Councils funding responsibilities are highlighted in **point 48**.
19. The ongoing maintenance costs are estimated to be £165,000 a year and include the proposed flood gate at Cardiff Sailing Club, **points 50 & 51**
20. As the revised scheme now excludes work that would protect Lamby Way landfill and infrastructure, estimated to cost £10M, the ongoing risks are noted in **points 52 – 56**. It is also noted that the Council may decide to protect this area at a 'lower level' as there is less risk to residential properties.
21. **Points 57 & 58** identify the consultation with local members
22. Previous Scrutiny that has been undertaken in relation to the programme is noted in **point 59**.
23. The reasons for the recommendations are identified in **points 60 - 62**, which include a recommendation to commit to the funding contribution required to deliver the improvements needed to protect the coast and residential properties.

Legal Implications

24. The contract for the works must be undertaken in compliance with Public Contract Regulation 2015 ('PCR'). The Cabinet report proposes an 'open procedure' however it should be noted that:
 - All interested parties can submit a tender – if this is an active market with many potential bidders then the process could prove cumbersome in terms of the number of bids received. Conversely if there are few potential bidders then this should not prove a problem.
 - If the Open procedure is used then no negotiation with bidders is permitted.
 - The procedure tends to be most suitable where tenders will be easy to evaluate.
 - All tender documentation will be required to be available at the date the contract notice is published. Legal advice should be sought on the procurement documents including the form of contract

25. It is also noted that in **point 65** that using NEC4 option C form of contract is preferred by the service area, this broadly means that a target cost is agreed and any financial gains and/or risks are shared between the client and the contractor.

26. **Point 67** notes the powers of the Council as the relevant Coast Protection Authority in relation to land ownership and consent to carry out the required works in the Programme.

27. **Point 69** advises the need that any documentation in relation to procurement states that awarding of the contract is subject to grant funding

28. The duties in relation to Equalities is noted in **point 70**

29. A 'standard' response regarding the Well Being of Future Generations is noted in **points 71 – 74.**

30. 'General' points are noted in **points 75 & 76** that include:

- Any procurement undertaken is in accordance with financial and budgetary policies;
- Consideration of the Welsh Language (Wales) Measure 2011 and the Welsh Language Standards;

Property Implications (Points 77 – 80)

31. Both Council and privately owned land are possibly impacted by the proposals, in particular Lamby Way, which is not included in the scheme, these will need to be investigated further to understand the full implications. This will be undertaken with Strategic Estates and in line with the Councils Asset Management process.

HR Implications

32. None are noted in the Cabinet report.

Proposed Recommendations to Cabinet

33. The report to Cabinet contains the following recommendations:

- i. To approve the revised design for the coastal protection scheme and the full business case to be submitted to Welsh Government for the Coastal Risk Management Programme.*
- ii. Approve the commitment of the funding contribution identified within the financial implications in Appendix 1.*
- iii. To delegate authority to the Director of Planning, Transport and Environment subject to consultation with the Cabinet Member for Climate Change, s.151 Officer and Director Governance and Legal Services, to deal with all aspects of contract award following the approval of the Full Business Case by Welsh Government.*

Previous Scrutiny

34. At its meeting on 6 March 2018, Committee Members undertook pre-decision scrutiny on the Coastal Risk Management Programme's Outline Business Case.

The subsequent letter, highlighted the following points:

- The Committee supported the plan to improve coastal flood defences between Rover Way in the west and Lamby Way in the east and felt that developing the Outline Business Case, had been a thorough process.
- Members requested the new coastal flood defence scheme be designed to support wildlife in the area and to also allow and encourage a range of leisure opportunities, such as walking.
- Further information on the modelling work undertaken to assess the impact creating the scheme would have on other nearby coastal areas was also requested.

35. In June 2021, Committee undertook pre-decision scrutiny on the Coastal Risk Management draft Full Business Case. The recommendations agreed by Cabinet in the June 2021 Cabinet Report included:

- The principal design for the Coastal Protection Scheme, and the requirements within the draft business case be submitted to Welsh Government for the Coastal Risk Management Programme.
- Approval for the proposed procurement approach including the evaluation criteria/weightings
- Approval for the commencement of procurement for the construction contract to deliver the coastal defence improvements.
- Note the presentation of a further report to Cabinet with the final Full Business Case, including final tender costs, project risks and mitigations.

36. During Committee's consideration of the June 2021 Cabinet Report, the change in estimated construction cost was highlighted, along with the impact on the coastal path. In addition, Committee Members also sought assurance and requested insight on work to secure the Marine License.

37. In March 2022, the Committee considered the Full Business Case and Awarding the Contract for the works and recommended that the Full Business Case

painted a more balanced picture that factored in the cost of not carrying out the coastal risk management programme.

Way Forward

Cllr Caro Wild, Cabinet Member for Climate Change and Andrew Gregory, Director for Planning, Transport and the Environment have been invited to make a statement and answer Member's questions. They will be supported by further representatives from the Planning, Transport and the Environment Directorate who have been asked to make a brief presentation followed by Member's questions

Legal Implications

The Scrutiny Committee is empowered to enquire, consider, review and recommend but not to make policy decisions. As the recommendations in this report are to consider and review matters, there are no direct legal implications. However, legal implications may arise if and when the matters under review are implemented with or without any modifications. Any report with recommendations for decision that goes to Cabinet/Council will set out any legal implications arising from those recommendations. All decisions taken by or on behalf of the Council must (a) be within the legal powers of the Council; (b) comply with any procedural requirement imposed by law; (c) be within the powers of the body or person exercising powers on behalf of the Council; (d) be undertaken in accordance with the procedural requirements imposed by the Council e.g. Scrutiny Procedure Rules; (e) be fully and properly informed; (f) be properly motivated; (g) be taken having regard to the Council's fiduciary duty to its taxpayers; and (h) be reasonable and proper in all the circumstances.

Financial Implications

The Scrutiny Committee is empowered to enquire, consider, review and recommend but not to make policy decisions. As the recommendations in this report are to consider and review matters, there are no direct financial implications at this stage in relation to any of the work programme. However, financial implications may arise if and when the matters under review are implemented with or without any modifications. Any report with recommendations for decision that goes to

Cabinet/Council will set out any financial implications arising from those recommendations

RECOMMENDATIONS

The Committee is recommended to:

- i) Consider the information in this report and the information presented at the meeting;
- ii) Determine whether they would like to make any comments, observations or recommendations to the Cabinet on this matter; and,
- iii) Decide the way forward for any future scrutiny of the issues discussed.

Davina Fiore

Director of Governance & Legal Services

20 September 2022