

Report to: Cabinet



Date of Meeting 5 June 2024

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Feniton Phase 4 Resolving risks to get to site

Report summary:

This report updates cabinet on the latest set of issues the project has faced prior to getting to site, and the reason for the delay in getting to site. It also highlights the remaining risks to the project and what is being done to mitigate risks and also updates the total project costing and asks for approval for additional total project spend

Is the proposed decision in accordance with:

Budget Yes No

Policy Framework Yes No

Recommendation:

1. That cabinet approves the full scheme value for approval of £6.075m (No further EDDCs funds are required at this time, with additional project budget found from external sources)
2. That cabinet agrees to postpone commencing Phase 4 until the planning permission is granted.
3. That cabinet approves EDDC entering into a contract with Kier Construction to deliver Phase 4, to mobilise asap once the planning permission has been secured, noting that the current additional external funds not yet been formally approved.
4. Subject to recommendation 3, cabinet grants authority for EDDC to enter a contract for construction with Kier up to the value of £3.5m

Reason for recommendation:

1. To ensure project has authority to proceed.
2. To support the planning process and not risk starting a scheme with a planning objection,
3. To remove any further delay to starting on the project. As delay will likely raise costs, with more fundraising needed.
4. To enable a speedy contract signing to get to site soon.

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Climate change High Impact

Risk: High Risk; There are financial and planning risks with this project outlined in the report

Links to background information N/A

Link to [Council Plan](#)

Priorities (check which apply)

- Better homes and communities for all
 - A greener East Devon
 - A resilient economy
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Report in full

1. Background

1.1. Feniton Flood Alleviation Scheme (FAS) Background

Flooding in New Feniton has been an issue since the development was built in the late 1960s; with flooding occurring every year and internal flooding every 2 to 3 years.

The biggest well recorded event was in late October 2008 when there was serious flooding in the main estate. This event resulted in the internal flooding of 58 properties with flood depths of up to 1.0m.

A Scheme was designed in 2015 and updated to current design guidance in 2023. The scheme will provide protection to 72 properties at risk of flooding (this includes 63 properties which are currently considered at very significant risk) and peace of mind for the whole community of Feniton. The scheme has been split into 4 phases, consisting of

- Phase 1 – bypass channel downstream of the railway to take the increased flows from the new culvert.
- Phase 2 – property level resilience measures of downstream properties.
- Phase 3 – undertrack crossing (UTX) of the Exeter to Waterloo line.
- Phase 4 – completion of culvert linking the whole scheme together.

Phase 1 and Phase 2 were completed in 2016. Phase 3 was completed in Autumn 2022. Phase 4 is now hoped to start in August 2024

- 1.2. Feniton FAS has been progressing with Atkins redesigning Howicks Scheme. This has been in part to meet current regulations and guidance, but also to reflect landowner changes over time.
- 1.3. Atkins have designed a better performing scheme giving higher return period protection and increased performance, such as a larger trash screen.
- 1.4. The newer standards, plus construction cost inflation has meant that last year's scheme costs have increased.
- 1.5. Aside from costs, three further risks remain outstanding.

2. Risk 1 - Network Rail Risks

- 2.1. As part of our scheme, we have investigated what has been built under the railway, having yet to receive as built drawings.
- 2.2. There are 3 issues with the design that the designers for Network Rail have designed
 - 2.2.1. The upstream manhole chamber has been built at the wrong angle. It appears it's a clear drawing error by the designers for Network Rail as the plan shows it correct, but the detail shows the downstream chamber detail being used as the upstream chamber detail. This means the chamber needs to be replaced to fit our scheme.

- 2.2.2. There are question marks on the robustness of the chambers designed by the designers for Network Rail. EDDCs design consultant believe they are flimsy and will deflect/move under flood loading. This could lead to scheme/railway failure.
- 2.2.3. EDCC's design consultant are concerned about how the two pipes are joined under the railway, and that they could separate under load, which may cause the scheme and/or railway to fail.
- 2.3. The following has been suggested as fixes if required.
 - 2.3.1. The chamber will need to be replaced. This will cost £33k
 - 2.3.2. The downstream chamber will also need to be replaced. This will cost £33k
 - 2.3.3. The pipe may need to be lined and welded. This cost comes in at £61k if both are needed, or just £4k if welding is sufficient. This gives us a £130k risk that needs to be allowed for.
- 2.4. Although my contact at Network rail has been helpful, their design consultant has gone from being receptive, to ignoring our requests for meeting/update, and the Environment Agency has escalated this via their high level Network Rail contacts.
- 2.5. Our contract is with Network Rail, for them to deliver the scheme. Network Rail have a contract with the design consultants to design. Network Rail's contractor has built what has been drawn, so they are not liable.
- 2.6. We are keen to recoup all/some of the cost from design consultant as designers if they have designed something not up to standard and in error.
- 2.7. We hope that designers for Network Rail are able to provide assurance to both Network Rail and EDDC that their downstream culvert and the culvert under the railway is up to standard to deal with flood flows, so these do not need to be replaced, but until we have it confirmed, it is sensible to include their remedy cost within our project.
- 2.8. The upstream manhole chamber will need to be replaced even if the rest of the design is up to standard. As a drawing error, the designer for Network Rail should be liable for this cost.
- 2.9. All of the additional costs above are currently included in the new financial figure, so the project has ultimately removed this risk, by allocating sufficient funds to remedy without waiting for confirmation on design, and any financial reimbursement. However, we will seek reimbursement if due.

3. Risk 2 - Planning Permission Objection from Statutory Consultee

Due to the changes in the scheme we applied for a new planning application, however a few risks are still unresolved

- 3.1. The Environment Agency have objected to our application. This is based on the risk of ground water pollution in a source protection zone. This is because the scheme passes through a registered historic landfill site. This is the dismantled railway of the Sidmouth line.
- 3.2. We understand the site to be low risk both based on a previous report submitted with the Howicks application.
- 3.3. However due to the passage of time, this report cannot be reused. Therefore we are exploring both submitting an updated desk study, or if needed, committing to a new ground survey and testing.
- 3.4. Both approaches will not be ready in time for determination of the application on the 16th May, and potentially not ready by the likely target planning committee date of 18th June.
- 3.5. It would be unusual for the Planning Committee to approve an application with an objection from a statutory consultee, therefore it would be a large risk to start construction on a scheme with planning permission not granted.
- 3.6. However, if this objection is removed or altered the additional ground water report required could be a condition, thus not delaying the project starting.

- 3.7. We believe the ground water risk to be very low, having not encountered ground water in the borehole done 10 years ago, and in the recent nearby railway crossing.
- 3.8. Assuming the planning objection risk is removed or conditioned, should we find groundwater and/or contamination there are various construction techniques to mitigate the risk. One technique has already been allowed for by the contractor in their pricing, and others would be covered by the risk budget should they be needed.

4. Risk 3 - Financial Risks.

4.1. Please see below tables showing costs, income and savings

Costs

4.1.1. Spend and forecast spend

Spend	Spend up to 2023	2023 costs	2024 costs	23/25 Difference	Notes	Total costs (k)
A) EDDC salaries	87	10	10	0	Same	£ 97
B) Consultants / Design / Management / Surveys / environment mitigation	287	191	280	89	ECC PM added	£ 567
C) Land Matters (compensation and Land Agent fees)	87	181	100	-81	Reduced due to recent estimates	£ 187
D) Construction totals (not including Phase 3)	270	2481	3285.6	804.6	Large increase in costs	£ 3,556
E) Phase 4 Contingency	0	112	112	0	Same	£ 112
F) Other costs	1	1	1	0	Same	£ 2
G) Risk Allowance	1	256	256	0	Same	£ 257
H) Phase 3 costs	769	0	0	0	Same	£ 769
I) Additional collaborative highways flood alleviation works	0	50	50	0	Same	£ 50
J) Additional cost for design/construction change of culvert exit	0	50	0	-50	Absorbed in D) above	£ -
K) Addition Network rail cost			130	130	New cost	£ 130
L) Pre contract contractor costs			83	83	Added, but some would have sat in D) above	£ 83
M) Other fees			15	15	Added	£ 15
N) 2nd EDDC Risk Pot			250	250	Added, but additional funding	£ 250
Initial Project costs	£1,502	£3,332	4572.6	-1240.6	Total excluding maintenance	£ 6,075

4.1.2. Income to date

Annualised funding profile (£k)	Previous Spend	2023 agreed funding	2024 Agreed funding	Total (k)
Grant in Aid	2685	838		3523
Initial Local Levy Payment	301			301
Additional Local Levy to fund highways improvements		50		50
Existing Partnership funding	715			715
Future Partnership funding		195		195
Approved but as yet unclaimed FDGIA		50		50
EDDC Extra funding			250	250
Total	3701	1133	250	5084

4.1.3. Current budget deficit

Spend forecast	£6,075
Current budget	5084
Difference	-990.6

4.1.4. Potential savings and additional funding

Potential Savings / funding	Value (k)
Value engineering	Up to 250
Network Rail's designer paying for their error	130
Reducing risk pot to 10%	263.44
Potential Local Levy Bid	400
Potential PF further eligibility check	500-1000
Total	1960.44
Potential Funds over funding gap	969.84

- 4.2. Inclusive of EDDC taking on remedy costs for the issues regarding the railway cost errors, the scheme is £990k over budget.
- 4.3. The largest cost increase is construction. This is an increase of £805k, but also includes a portion of the £83k pre contract fees that have been incurred (which include compound service connections, hedge clearances etc)
- 4.4. The next largest cost at £130k is the issue with the railway crossing culvert
- 4.5. The next largest increase is designer/consultant costs. This is £89k to allow for external project management and further design costs.
- 4.6. There has been a saving on likely compensation of £81k due to updated estimates.

- 4.7. All of the above means the scheme is over approved total budget, therefore the budget needs to be raised and costs reduced to deliver the project.
- 4.8. Potential funding increase:
- 4.8.1. At the time of writing, it is believed that through the PF calculator, we are eligible for an additional £990k of FDGIA. (central government money) Although not required, further eligibility beyond £990k is also possible
 - 4.8.2. Any further FDGIA application will be subject to assurance by the EA, so not guaranteed, although given the national desire to deliver improved flood defences it will be forthcoming. It is hoped by cabinet, that this funding will have been approved.
 - 4.8.3. Local Levy funding has been approached with a suggestion of a further £400k been mooted.
 - 4.8.4. Local Levy is decided by the South West Flood and Coastal Committee, and is often used to get schemes over the line. It is hoped we will get confirmation of its approval by cabinet.
 - 4.8.5. The EA are keen this scheme progresses, as it's so near getting to site, it is a quick win for homes better protected (a government target). They may be able to fund outside the PF calculator allowance, but this is not normally possible (but has been done) – We are exploring this, but given 4.8.1. and 4.8.4. it should not be needed.
- 4.9. Potential Savings
- 1.4.1. Given the delay caused through risk 1 and risk 2, we are carrying out value engineering of the scheme. This was committed to prior to likely additional funds being found . This will likely create a saving of up to £250k. Half of this value is savings on switching to a uniform plastic pipe and reducing manhole chambers. The other half of which is found by being able to reuse the sub soil locally, rather than pay for disposal. We are also investigating if we can receive an income for the subsoil from a southwest reservoir project.
 - 1.4.2. Given the likely improved funding situation, we may not use all the value engineering opportunities, as in some instances moves us away from the optimal design.
 - 1.4.3. The railway culvert risk may not be fully realised, or indeed may be funded by the designer's design liability insurance, so there could be up to £130k savings. However, this risk is unlikely to be mitigated prior to cabinet. Therefore £130k has been allowed for it.
 - 1.4.4. The client held risk pot is currently £619k which is very healthy at 19% of construction cost. It's been suggested that this is reduced to 10% of construction cost given the stage we are at. This would give a £263k saving.
 - 1.4.5. However given the rocky path to scheme delivery since 2012 a larger than normal risk pot is sensible to maintain, and will be handed back to the relevant funders if not used.
- 4.10. Savings vs additional funding.
- 4.10.1. The most likely scenario is that we obtain one or both sets of additional funding, and reduce construction costs by up to £250k which would fill the project deficit.
 - 4.10.2. Clearly any savings from risks not being realised would be returned to the taxpayer. Initial local levy would be returned. If £250k of the risk budget is not used, this would be returned to EDDC. Any other savings/risk budget not used, would be returned to the Environment Agency.

4.10.3. It is worth noting that the construction contract is let under a target cost pain/gain contract which encourages the project to be brought in under budget, to offer more profit to the contractor, and savings to the client. Overspend is shared, discouraging the contractor to overspend. The current risk budget should cover any client owned overspend.

4.11. Delaying the works to tender the construction on the open market.

4.11.1. We have considered taking the design to the open market to see if there is a lower construction price outside the government framework.

4.11.2. Given our main funding source's preference for their framework for certainty of delivery, we are keen to proceed with the current contractor.

4.11.3. Furthermore, a tendering exercise will likely cause further delay, may not result in sufficient savings and take more EDDC staff time.

4.11.4. Therefore we have decided not to tender the construction outside the framework at this point, however it remains an option should the scheme remain underfunded.

5. Further risk and opportunities

5.1. The delay is going to mean more working through the winter months which will affect works in the ground more. One of the areas we are working in supports two horses, and there is a concern that we will incur expensive off site livery fees if too much of their field is taken and cannot recover.

5.2. To mitigate this, we are proposing to carry out channel widening works in the field outside our planning permission application (works covered by permitted development)

5.3. This will allow this section of the field to recover before the other section of the field is needed for the culvert work, keeping the horses on site.

5.4. As no flood flows will be put down the channel for some time (due to the main scheme delay) this will give the channel time to grass over, removing the need for erosion control mats, which should reduce costs.

5.5. Therefore we are planning a soft start on site soon for this element.

6. Way forward

6.1. Best case scenario is that all objections/issues are resolved prior to Planning Determination on 16th May. Therefore planning (subject to conditions) would be issued. We would then wait until the date of this cabinet report, and if agreed, would enter the contract to start construction soon after. This means we could be on site within 6 weeks of contract signing, and potentially prior to August

6.2. Most likely scenario is that the objections are not resolved prior to planning determination, therefore the application would go to committee. At the time of writing, it is assumed that this project will be at committee on 15th June. Assuming that planning is granted (even with conditions) we would seek to enter the construction contract soon after, with a six week lead in time for site start, giving us an August start.

6.3. Less likely scenario is that the application does not make it to June planning committee, but makes it to July committee. This would mean a September start date. Given losing a further month of likely good weather, the scheme may need to start in the new year, which risks costs increasing and further flooding risk for Feniton residents.

6.4. Worst Case Scenario is that planning is not granted and significant work is required which would delay us further. This would mean a 2025 start but leaving a risk of construction cost increase and further flood risk to Feniton,

6.5. We are currently content that the funding gap will be removed given our eligibility, so don't believe there is a risk of the scheme not progressing due to funding.

Financial implications:

The financial details are covered fully in the report.

Legal implications:

There are no substantive legal issues to be added to this report