

**ENVIRONMENT, CLIMATE EMERGENCY AND TRANSPORT COMMITTEE****Tuesday, 14 March 2023**

<b>Report Title:</b>	<b>WEST KIRBY FLOOD ALLEVIATION PROJECT, VARIATION OF CONSTRUCTION PHASE CONTRACT AND ACCEPTANCE OF FLOOD DEFENCE GRANT FUNDING</b>
<b>Report of:</b>	<b>DIRECTOR OF NEIGHBOURHOOD SERVICES</b>

**REPORT SUMMARY**

This report provides an update on delivery of the West Kirby Flood Alleviation project and seeks approval for an increase in the construction contract sum and for acceptance of additional grant funding.

The West Kirby Flood Alleviation scheme strategically aligns with both the Sustainable Environment and Safe and Pleasant Communities themes of the Wirral Plan 2021-26.

The scheme is located within Hoylake & Meols and West Kirby & Thurstaston wards.

The recommendations are a key decision by financial value.

**RECOMMENDATIONS**

The Environment, Climate Emergency and Transport Committee is recommended to:

1. Accept additional Flood Defence Grant Funding and Local Levy Grant Funding of £4,400,000 provided by the Environment Agency;
2. Approve a variation in the value of the construction contract with VolkerStevin Ltd for the West Kirby Flood Alleviation Scheme from £9,640,000 to £14,282,000, and
3. Authorise the Director of Law and Governance to negotiate and finalise the associated grant funding agreements and contract variations.

## SUPPORTING INFORMATION

### 1.0 REASONS FOR RECOMMENDATIONS

- 1.1 On 15 November 2021, the Environment, Climate Emergency and Transport Committee approved use of the Environment Agency's Collaborative Delivery Framework for the Engineering Construction Contract (ECC) to deliver the West Kirby Flood Alleviation Scheme. The Committee also delegated authority to the Director of Neighbourhood Services to award the ECC to the Framework supplier, VolkerStevin Ltd, following a procurement process.
- 1.2 On 11 April 2022 the Director of Neighbourhood Services agreed to award a contract to VolkerStevin Ltd following a procurement process which set the Target Cost of the ECC contract at £9,640,000. The supporting report to the decision identified the total available project budget as follows:
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|--|--------------------|
| ○ Environment Agency's Flood Defence Grant Aid           | £3,014,000         |
| ○ Environment Agency's Other Government Department Grant | £3,300,000         |
| ○ Regional Flood Coastal Committee Local Levy            | £1,468,000         |
| ○ Wirral Council Capital Programme                       | £3,800,000         |
| <b>TOTAL</b>   | <b>£11,582,000</b> |
- 1.3 The accompanying report to the above officer decision identified the forecast costs for the project against a total budget as follows:
- |  |                    |
|--|--------------------|
| ○ Committed and Existing Expenditure Total | £1,000,000         |
| ○ Main ECC Value                           | £9,640,000         |
| ○ Contingency                              | £ 942,000          |
| <b>TOTAL</b>                               | <b>£11,582,000</b> |
- 1.4 Construction commenced in May 2022. During the construction works various matters detailed in section 3.0 and Appendix A to this report have resulted in the contract manager re-assessing the sums properly due to VolkerStevin Ltd under the terms of their contract with the council. The contract manager is acting independently and impartially as Project Manager under the form of contract used: New Engineering Contract version 4 (NEC4). The Project Manager is appointed under the council's contract with AECOM, which is a global construction consultancy also providing the project design resource. The Project Manager's current assessment of the final contract outturn sum likely to be properly due to VolkerStevin Ltd is £14,282,000.
- 1.5 Therefore, there is predicted to be a resulting variation to the final contract sum that is likely to become due to VolkerStevin Ltd on completion of the works which is in excess of 10% of the contract sum at the time of award of contract. The additional costs exceed the contingency identified in the April 2022 report and therefore exceed the allocated budget for the project.
- 1.6 A detailed business case update and supporting application was prepared by council officers and submitted to the Environment Agency, as described in paragraph 3.6 of this report. The Environment Agency has approved this application, which provides a further £4,263,000 of Grant Aid funding and £137,000 Local Levy funding into the overall project budget. This additional funding will be sufficient to meet the contract

sum variation and include for delivering the remainder of the project with a modest contingency amount retained. Consequently, in accordance with the council's Constitution, Committee approval is required to formally accept the total additional £4,400,000 Grant Aid funding.

- 1.7 The increase in contract value of £4,642,000 is met by the additional grant of £4,400,000 and £242,000 as part of contingency budget allocated to the scheme.

## **2.0 OTHER OPTIONS CONSIDERED**

- 2.1 To do nothing is not an option. The additional contractual sums have been independently assessed and determined under the terms of the council's contract with VolkerStevin Ltd. There is a requirement to vary the contract sum value accordingly in order to allow for continuation of payments to VolkerStevin Ltd. Failure to do so would place the council in breach of contract and liable for interest on late payments.
- 2.2 Nevertheless, in order to mitigate the impacts upon the budget, all possible means of minimising costs by value engineering including reviewing working methods, materials and scope, have been properly considered by all parties through the relevant contract governance processes, meetings and Project Board. Any savings have been, and will continue to be, implemented where they are practicable and without detriment to the project.
- 2.3 As well as the Grant Aid funding from the Environment Agency, which has been successfully secured, two other funding sources were considered to address the additional budget requirement:
- Additional Council Capital Funding
  - Additional Regional Flood and Coastal Committee Local Levy Grant
- 2.4 Given the council's current budget pressures an option to increase the council's contribution from reserves or from additional capital borrowing to address the additional project budget requirement was not seen as viable and was not pursued.
- 2.5 In January 2022 the Regional Flood and Coastal Committee (RFCC) agreed to contribute funding to the project up to a maximum of 15% of the contract value presented at that time. This amount equates to £1,605,000. The previously approved amount of £1,468,000 has now been received with the additional £137,000 referenced in paragraph 1.6. Discussions have taken place with the RFCC regarding a further increase in the contribution. However, the current Local Levy budget is fully allocated in 22/23 and also in 23/24, and indications are that a bid would be unlikely to be approved.

## **3.0 BACKGROUND INFORMATION**

- 3.1 Changes to the scope of the works, or delays caused as a result of such changes are classed as Compensation Events under the NEC4 ECC form of contract. All Compensation Events and their supporting quotations are subject to review by the NEC4 Project Manager to ensure they are legitimate and reasonable before agreement, or revision following assessment, is reached. Any agreed Compensation Events change the value of the contract Target Cost and thereby also influence the contract pain/gain mechanism. If the Contractor delivers the works for less than the agreed Target Cost then there is a share of the savings for both the Contractor and

Client, Wirral Council. Conversely, if the works costs more than the Target Cost then the additional cost is shared between the Contractor and Client.

3.2 A number of Compensation Events have been submitted and agreed which have resulted in a change to the Target Cost of the contract. There are four particular and significant factors which have led to the increase in costs exceeding the contingency amount identified in April 2022 and the completion date originally planned, namely:

- Variations in Ground Conditions
- Relocation of RNLI and associated accommodation works
- Global increases in construction material costs and associated prices
- Design Variations

These matters and their effects on the contract sum and completion date are set out in more detail in Appendix A to this report.

3.3 The revised Target Cost of £14,282,000 includes costs associated with time delays which have together resulted in VolkerStevin Ltd's current prediction for planned completion of the construction works now extending until early June 2023, compared to the tender stage programme date of late November 2022. However, sectional completion which includes the majority of the promenade, flood wall and highway works is currently forecast for April 2023 ahead of an official scheme opening by the Mayor of Wirral in May 2023.

3.4 Robust governance arrangements are in place to manage the delivery of the project, including fortnightly Progress Meetings and Monthly Board meetings. Early Warnings (events which have the capacity to change time or cost), Compensation Events and changes to Target Cost form part of the standard agenda items for both the Progress and Board Meetings. All meetings are attended by Wirral Council as Client, AECOM as Project Manager, Supervisor, and Designer, VolkerStevin Ltd as Contractor, and also the Environment Agency as major funding partner.

3.5 Separate meetings also take place to manage and reduce project risks and also to monitor and track budget issues. As such the Environment Agency as has had sight, at an appropriate level, of the increase in contract value, and was also involved in the decisions regarding addressing the additional budget need through a variation of the Grant Aid requirement.

3.6 A variation of Flood Defence Grant Funding was prepared in early January 2023 and submitted to the Environment Agency's Area Flood and Coastal Risk Manager for further review against the Environment Agency's own assurance processes. Because of the value of the scheme the application has been reviewed by the Environment Agency's Large Projects Review Group (LPRG) along with a supporting "Director Briefing Note". The briefing note submitted is attached as Appendix B to this report. The variation approval was only granted at Executive Director level in the Environment Agency following a rigorous assessment of the council's application and Director Briefing note by the LPRG, including consideration of the council's responses to the LPRG's subsequent questions following its initial review. The variation application and Director Briefing Note made it clear that despite the change in project value taking it outside of the eligibility for grant aid requirement additional grant should still be provided for the scheme, because:

- The scheme represents value for money to the taxpayer with a Benefit: Cost ratio of 2.2:1

- Additional funding from the council has been explored and is not currently possible
- The scheme is in progress and the additional costs have been fairly brought by the Contractor
- The additional costs (excepting those relating to inflation) could not have been foreseen prior to contract award

3.7 Environment Agency approval demonstrates that despite significant cost increases the project has been properly managed and the scheme still represents good value for money.

#### 4.0 FINANCIAL IMPLICATIONS

4.1 The West Kirby Flood Alleviation ECC contract outturn value has increased from £9,640,000 to £14,282,000. This is a difference of £4,642,000 which is met by the additional grant aid of £4,400,000 and use of £242,000 contingency.

4.2 The increase in scheme value has a consequential impact on project value and project budget. The revised project budget is set out below:

○ Environment Agency's Flood Defence Grant Aid	£7,277,000
○ Environment Agency's Other Government Department Grant	£3,300,000
○ Regional Flood Coastal Committee Local Levy	£1,605,000
○ Wirral Council Capital Programme funding	£3,800,000
<b>TOTAL</b>	<b>£15,982,000</b>

with costs against this total budget identified as:

○ Committed and Existing Expenditure Total	£1,200,000
○ Main ECC Value	£14,282,000
○ Contingency	£ 500,000
<b>TOTAL</b>	<b>£15,982,000</b>

4.3 The Wirral Council budget remains as reported in the officer decision note of 11 April 2022 at £3,800,000 and is comprised of:

○ Capital borrowing directly for the scheme	£2,410,000
○ Flooding Prevention Reserve	£ 454,705
○ Liverpool City Region Combined Authority Highways Grant	£ 459,000
○ Approved virements from Neighbourhoods capital programme	£ 476,295
<b>TOTAL</b>	<b>£3,800,000</b>

No additional council Capital borrowing has been required and Wirral Council's contribution to the project remains at £3,800,000.

4.4 Appendix A provides further detail on how contract costs have increased.

4.5 The Environment Agency has acknowledged nationally that inflationary increases have impacted on all schemes in construction and as a result recognise that cost increases due to inflation are not relevant to the economic assessment criteria that determine the eligibility of Grant Aid. This means that Grant Aid is available to fund the full cost of inflationary increases providing it can be demonstrated no other funding is available.

- 4.6 The programme delay and associated costs related to the relocation of the RNLI have been raised at a national level with the RNLI in order to foster greater communication and cooperation at a local level. The success of that national intervention has been communicated to the Environment Agency's national delivery team so that discussions can take place at a national level between the RNLI and the Environment Agency to help resolve future problems in delivering the Environment Agency's national flood investment programme.
- 4.7 A pragmatic approach was taken to resolve programme delay caused by the wide variability in ground conditions. The conditions encountered varied significantly from those interpreted from the geotechnical surveys in terms of depth of underlying strata and bearing capacity of that strata. The pragmatic approach, based on a greater understanding of conditions as a result of additional testing, has negated any requirement for significant piling re-design and additional more disruptive piling works.
- 4.8 Wherever possible value engineering through risk reduction and design workshops has taken place to minimise construction costs associated with design variations.

## **5.0 LEGAL IMPLICATIONS**

- 5.1 A contract variation changing the Main ECC Target Cost value to £14,282,000 from £9,640,000 is required to allow the council to deliver its contractual obligations. This will be effected by the Director of Law and Governance.
- 5.2 The contract variation is required because Compensation Events have been correctly brought and agreed under the NEC4 ECC terms of contract. Use of the Environment Agency Collaborative Delivery Framework was approved following review by Procurement and Legal officers as set out in the officer decision note of 15 November 2021.

## **6.0 RESOURCE IMPLICATIONS: STAFFING, ICT AND ASSETS**

- 6.1 The construction of the West Kirby Flood Alleviation scheme will provide a new flood risk asset for Wirral Council. Management of flood risk through operation of flood gates can be met through existing revenue budgets for flood and coastal risk management as can any maintenance issues arising.
- 6.2 Construction of the new promenade, old baths site area and public realm areas such as street lighting, highway and footway should reduce the current financial maintenance burden for existing and life expired highway assets, notwithstanding that there will be an ongoing maintenance and revenue budget liability for the council for new and improved highway infrastructure.

## **7.0 RELEVANT RISKS**

- 7.1 Failure to approve the additional contract variation and budget provision may affect the ability of the council to make payments to VolkerStevin Ltd under the terms of the contract, which would leave the council in breach of contract and liable to pay interest for late payment.
- 7.2 The increase in contract value from £9,640,000 to £14,282,000 has the potential to generate public interest with potential reputational and resources impact on the

council. Throughout the construction phase of the project regular communications updates to residents and other stakeholders have provided insights into scheme progression and delivery. These updates will continue to be used to focus on the delivery of the final stages of the scheme and also highlight how additional central government grant funding has been successfully secured to address the unforeseen increases at no additional financial cost to the council.

## **8.0 ENGAGEMENT/CONSULTATION**

- 8.1 Wirral Council has engaged with the Environment Agency as major funding partner throughout project delivery. VolkerStevin Ltd has provided a staffed community room facility, available to the public, within their site compound showing images of the scheme, progress reports and offering individual feedback and enquiry resolution. The community room is staffed by officers from the council, VolkerStevin Ltd and the Environment Agency.
- 8.2 Project officers working with the council's Communications team and colleagues at the Environment Agency and VolkerStevin Ltd have provided regular progress updates throughout the works via social media, press statements and Wirral View news items.

## **9.0 EQUALITY IMPLICATIONS**

- 9.1 There are no direct equality implications arising from this report which is concerned with contract value, budget and grant acceptance.

## **10.0 ENVIRONMENT AND CLIMATE IMPLICATIONS**

- 10.1 Use of the Environment Agency's Framework as the procurement mechanism requires the ECC to be delivered in accordance with the Environment Agency's Minimum Technical Requirements. The Minimum Technical Requirements are imposed to minimise the carbon budget of flood and coastal risk management schemes.
- 10.2 The West Kirby Flood Alleviation Scheme supports the council's Environment and Climate Emergency policy in developing resilience to more extreme weather patterns and rising sea levels that impact Wirral. The scheme reduces flood risk to 70 properties from an extreme event, with a further 134 properties benefitting from protection, due to rising sea levels, by 2040.
- 10.3 The construction site and its impact on the environment and people was assessed independently by the Considerate Constructors scheme in November 2022 and VolkerStevin scored 'Excellent' in each of the following three categories: Respect for the Community; Care for the Environment; Value Their Workforce, with an overall score of 41 from 45, which is rated 'Excellent' overall in the national scheme.

## **11.0 COMMUNITY WEALTH IMPLICATIONS**

- 11.1 The scheme to reduce flood risk at West Kirby brings in over £12m in external grant aid. Once constructed the scheme, through its public realm attributes, will increase tourism and the visitor economy to the area.
- 11.2 No formal requirement under the Environment Agency's CDF framework was included in the contract for the measurement of social value. However, Volkerstevin

Ltd uses their own Thrive model to measure this and during the delivery of the contract has delivered a number of local community initiatives providing social value into the local economy based on this model, with an equivalent financial value up to date of approximately £400,000 including:

- Sponsored the Rotary Club 2023 calendar
- Donated £150 to West Kirby Trader's Christmas lights
- West Kirby In Bloom – Sponsored 2 x large planters
- RNLI fundraising
- Sandlea Park – leaf collection, sweeping of paths, building compost containers by reusing our crates
- Food bank collection point in the drop-in with regular donations to the local food bank
- Christmas selection box donation to the food bank
- Participating in Open doors 2023 – providing young people the chance to 'look behind the hoarding.' We have two schools currently signed up
- Facilitated a site visit for a 2nd year civil engineering student from Newcastle University
- 50% of workforce are local (within 30 miles)
- Contribution to new lighting in Coronation Gardens
- Environment Agency graduate day event

**REPORT AUTHORS: Simon Fox**

(Assistant Director – Highways and Infrastructure)

email: [simonfox@wirral.gov.uk](mailto:simonfox@wirral.gov.uk)

**Neil Thomas**

(Senior Manager - Flood and Coastal Risk Management)

email: [neilthomas@wirral.gov.uk](mailto:neilthomas@wirral.gov.uk)

## **APPENDICES**

APPENDIX A - ADDITIONAL COST AND TIME FACTORS

APPENDIX B – ENVIRONMENT AGENCY LPRG DIRECTOR BRIEFING NOTE

## **BACKGROUND PAPERS**

Form FCERM4 – Application for the allocation of contingency or a change in total project cost for approved schemes and studies – submitted to Environment Agency 13 January 2023

Environment Agency FCRM Approval of FCRM Capital Grants Application March 2023

Various commercial contract documentation – held by the Senior Manager, Flood and Coastal Risk Management

## **TERMS OF REFERENCE**

This report is being considered by the Environment, Climate Emergency and Transport Committee in accordance with Sections (a) and (e) of its Terms of Reference:



The Committee is charged by full Council to undertake responsibility for the Council's role and functions:-

- (a) in co-ordinating the response to cross-cutting sustainability issues such as reducing carbon emissions, air quality issues, climate change response, improving resource efficiency and developing sustainable energy;

**SUBJECT HISTORY (last 3 years)**

<b>Council Meeting</b>	<b>Date</b>
Strategic Applications Sub Committee	02 November 2021
Environment, Climate Emergency and Transport Committee - West Kirby Flood Alleviation - Award of Contract for Construction Phase	15 November 2021
Decision – West Kirby Flood Alleviation – Advanced Engineering Construction Contract	21 February 2022
Decision – West Kirby Flood alleviation – Award of Main Engineering Construction Contract	11 April 2022