

## River Thames Scheme – Service Level Agreements (External Projects – Dr Marcel Steward)

**Synopsis of report: The Service Level Agreement (SLA) between the Applicant and the Local Planning Authority – the ‘Applicant SLA’ and between the 4 key local planning authorities – the ‘Inter Authority SLA’ – in respect of the River Thames Scheme (RTS) are almost finalised. The SLAs define the contractual relationship between the parties, the structure which the Development Consent Order (DCO) pre-application consultation will follow, the support which the Applicant will provide to the Consulting Local Authorities and the role of Runnymede Borough Council (RBC) as the Coordinating Authority for Surrey County Council (SCC), Spelthorne (SBC), Elmbridge (EBC) and Runnymede Borough Council (RBC) in their capacity as statutory consultees.**

**Both must be signed off at the earliest opportunity so that work can progress on the DCO to meet the planned timetables and permit the recruitment of staff to the Coordination Role to be carried out by RBC.**

**Recommendation: To agree to the RTS Applicant SLA in principle and to delegate authority to agree the final version and to sign the Applicant SLA and the Inter Authority SLA to the Chief Executive Officer in consultation with the Chairman and Vice-Chairman of the Corporate Management Committee.**

1. **Context of report**
  - 1.1 Appendix ‘A’ attached sets out information on the River Thames Scheme In Context which is summarised from the Environment Agency River Thames Scheme website.
2. **Report and, where applicable, options considered**
  - 2.1 The River Thames between Egham and Teddington is one of the largest areas of undefended developed floodplain in England. There is a history of flooding in the area over the past 100 years with major floods occurring in 1947, 1968, 2003 and 2014.
  - 2.2 UK climate change projections forecast that the situation will worsen. Data estimations are that the average winter daily average rainfall in England will increase by approximately 41% by 2050; peak river flows could increase by approximately 50% increasing the severity and intensity of flooding for communities, businesses and infrastructure.
  - 2.3 The estimated impact of a major flood in this area is currently estimated at £1 billion. Due to the impact of climate change this could be doubled by 2055. More than 11,000 homes and 1,600 businesses will benefit from reduced flood risk and rail, power and water networks will be more resilient. More detail is available in Appendix ‘A’ attached.
  - 2.4 The River Thames Scheme (RTS) flood relief scheme will consist of two new

flood channels through the Boroughs of Runnymede and Spelthorne in Surrey. There will also be increased capacity at the weirs in Sunbury, Molesey and Teddington and the Desborough Cut.

- 2.5 The RTS will ensure that there is no increased flood risk to any community in the area. In addition to increased flood resilience, the RTS is also projected to deliver the following benefits:
- contribute to a vibrant local economy by providing greater resilience to flooding of homes, businesses, and key infrastructure.
  - enhance the social and environmental value of the river
  - create new green spaces and recreation opportunities such as fishing, boating, and cycling.
- 2.6 The direct planning implications of the RTS are confined to 4 key planning authorities: Runnymede, Spelthorne and Elmbridge Borough Councils and Surrey County Council.
- 2.7 The Applicant (see paragraph 2.15 of this report for the definition of the Applicant) has confirmed that the Scheme is fully funded and the Outline Business Case has received HM Treasury approval. Final Business Case approval will follow when the Scheme receives Development Consent Order (DCO) consent (see Appendix 'B' attached and the Legal Implications in this report for further detail on the DCO). The Government contribution to the RTS is £380 million. Surrey County Council is contributing £270 million towards flood resilience in the County, including a financial contribution to the RTS of £237 million. Partnership contributions total £95 million (the partnership members are set out in paragraph 2.15 of this report). The 4 key planning authorities have contributed to the Scheme's development over 4 years from 2016 – 2020. RBC's contribution is £336,000. The Scheme does not require further revenue contributions from the 4 key planning authorities.
- 2.8 At its meeting on 19 October 2017, Runnymede's Full Council meeting considered a recommendation from the Corporate Management Committee held on 12 October 2017. Members fully supported the Council making a contribution to the River Thames Scheme in order to protect the Borough's residents, but expressed concern that some other local authorities had as yet not made any funding commitment to the River Thames Scheme. Members also considered that pressure should continue to be applied to Government to meet any shortfall in funding of the Scheme to enable it to go ahead.
- 2.9 Full Council on 19 October 2017 resolved that the Council would make a contribution in principle of £5m to the River Thames Scheme subject to the following caveats:
- a) the capital contribution was spread over 3 years: 2020/21, 2021/22, 2022/23;
  - b) all the participating authorities would commit to appropriate and proportionate contributions;
  - c) there was a robust, realistic and sustainable plan to close the financial gap and make the River Thames Scheme project achievable, which could be reported back to participating authorities at the earliest opportunity;

- d) every effort was made to improve on the contribution from central Government by improving the business case;
  - e) all parties would continue to seek private sector contributions from businesses that were going to benefit from the River Thames Scheme, especially Thames Water;
  - f) should the Treasury withdraw support for the River Thames Scheme, the Council reserved the right to withdraw its financial offer;
- 2.10 Full Council also resolved on 19 October 2017 that the Council would reserve the right to limit its liabilities in the event of project overspend and supported in principle a flood defence levy of Surrey households subject to further detail being provided.
- 2.11 The funding gap referred to in paragraphs 2.8 and 2.9 above has now been closed (see paragraph 2.7 above).
- 2.12 Elmbridge and Spelthorne Councils are committed to contributing to the Scheme at different amounts.
- 2.13 The Government directed that the RTS be treated as a Nationally Significant Infrastructure Project (NSIP) in December 2020. Appendix 'B' attached and the Legal Implications in this report provide detail on the Development Consent Order.
- 2.14 The project is finalising technical design work which includes the Pre-Application DCO Consultation and the subject of these SLAs. Assuming that the DCO is granted, construction is planned to commence in 2025/26. Approval of the outline business case was given by HM Treasury in Spring 2021. Final approval of the business case will be granted on the successful award of the DCO.
- 2.15 The RTS is being delivered by the Environment Agency (EA) and Surrey County Council (SCC) (both the EA and SCC are jointly referred to as "the Applicant") in partnership with:
- Runnymede Borough Council (RBC)
  - Elmbridge Borough Council (EBC)
  - Spelthorne Borough Council (SBC)
  - Royal Borough of Kingston upon Thames
  - London Borough of Richmond upon Thames
  - Thames Valley Berkshire Local Enterprise Partnership
  - Enterprise M3 Local Enterprise Partnership
  - Department for Environment Food and Rural Affairs (Defra)
  - Thames Water
  - Thames Regional Flood and Coastal Committee (RFCC)
- 2.16 It is important to note the unusual nature of the project in regard to the DCO Application in so far as the project Applicants (SCC and EA) and the 4 key planning authorities are all partners in the Scheme and contributors to the Capital Costs. In addition, all parties are Statutory Consultees under the DCO process. This complexity creates the requirement to establish an internal 'glass wall' within the Project Applicant side and within the key local

authority partners contributing to the Capital Cost of the Scheme in order to maintain the independence and integrity of the Planning Authorities i.e. SCC, RBC, EBC and SBC.

- 2.17 It has been agreed that the complexity of the consultation and the importance of maintaining the integrity of the interparty relationships, requires the creation of a Secretariat to manage this operation. RBC has been chosen to host this function as the Borough is the Coordinating Authority, is the location of the largest channel section and is expected to experience the majority of the direct positive and negative impacts of the Scheme. Appendix 'C' attached provides detail on the Secretariat.
- 2.18 In summary the function of the Secretariat will be as follows:
- the Secretariat will receive Work Requests (WR)s from the Applicant's Consultant for information and feedback
  - if the subject of the WR is directly responsible by each of the 4 key planning authorities the work requests will be forwarded directly to the authorities
  - if the subject of the WR is beyond the technical resources of any one or more of the 4 key authorities the Secretariat will forward the WR to the LA Tech. Consultant.
  - the findings of the LA Tech. Consultant will be forwarded to the 4 key planning authorities for response
  - all WRs are subject to a cost cap of £20k per WR. Where a WR is received which is expected to exceed this amount – either the costs of the 4 key planning authorities or the LA Tech. Consultant of both – the Secretariat will seek prior approval from the Applicant
  - the Secretariat will co-ordinate the communication and timing of the responses from the 4 key planning authorities to the Applicant
  - the Secretariat will regularly monitor the invoices from the 4 key planning authorities to the Applicant on a periodicity to be agreed
  - the Secretariat will coordinate and diarise all consultation meetings for the 4 key planning authority partner groups
- 2.19 The Applicant has agreed that the RTS will pay for the following:
- o As the direct planning implications are confined to 4 local planning authorities, the Applicant has agreed that the Scheme will pay for independent consultants to collectively and individually support the planning authorities in assessing the information being submitted by the Applicant for the DCO
  - o The independent consultants supporting the local planning authorities will be procured by the Applicant. The Applicant's sole responsibility in this regard is to procure and pay for the independent consultants supporting the planning authorities.
  - o The independent consultants will be solely managed by the key planning authorities via the Secretariat
  - o In procuring the independent consultants it has been agreed that the company appointed will provide assurance that there will be a demonstrable separation of interests between their contractual obligations to the key local planning authorities and any other obligations which are in place between the appointed company and the Applicant. This is not an unusual circumstance. There are a limited number of consultants in this sector of the market and large complex projects will commonly employ all of the available companies on both sides of the DCO

- It has further been agreed that the key local planning authorities will have rights of reliance on the findings of the independent consultants in the absence of a direct contractual relationship between the parties
  - The Applicant has also agreed that the RTS will pay for the officer time involved in attending regular meetings, provision of information, consultation and feedback to the process. This aspect is in discussion and subject to finalisation.
  - The Applicant has also agreed that RTS will pay for the employment costs of personnel to staff the Secretariat hosted by RBC.
  - In keeping with normal practice, the Applicant has not agreed that the Scheme will pay for the costs of the 4 key local planning authorities responding to their statutory duties under the Planning Act 2008. In practice this principally means responding to public consultations, responding to the Examination Authority or in the circumstances where the key planning authorities take on legal advisers to challenge any aspect of the DCO. This is normal practice within the DCO.
- 2.20 It is expected that during a long consultation process items will arise which are not identifiable or foreseeable but which will have to be addressed and may require extra resource. These will be considered on an individual basis as they become known. Whether the Applicant will financially support these will be decided at the time. The circumstances where the Applicant declines to provide support but where the resource is required will be covered under the terms of the Inter Authority SLA.
- 2.21 The Planning aspects of the Scheme are at the heart of the DCO process. In order to manage this, SLAs are required to ensure that the key Planning authorities have access to the necessary resources in order to cover all of the aspects of the Planning process via the DCO and act independently.
- 2.22 There are two SLAs currently being finalised:
- The **Applicant SLA** relates to the proposed RTS and is between the Applicant (EA & SCC) and the 4 key local planning authorities (RBC, EBC, SBC and SCC). This SLA addresses the funding mechanism for the independent consultant supporting the 4 key planning authorities, as well as the internal delineations to ensure that the planning advice provided is demonstrably independent from the Applicant. This SLA also identifies RBC as the Co-ordinating Authority for the DCO process and the host for the Secretariat. The draft Applicant SLA is at Appendix 'D' attached.
  - The **Inter Authority SLA** is between the 4 key planning authorities (RBC, EBC, SBC and SCC). This addresses RBC's role as the Coordinating Authority on behalf of EBC, SBC and SCC for the management of the independent consultant in assessing the DCO information in detail on behalf of the collective planning authorities, facilitating and managing the transfer of information from the Applicant's Consultant and returning the responses from the 4 key local planning authorities. The Inter Authority SLA will also cover those aspects of the DCO process which the Applicant has not agreed to pay for, but which may be required by the local planning authorities in fulfilment of their statutory duties. In large part the Inter Authority SLA will mirror the Applicant SLA.

### **3. Policy framework implications**

- 3.1 One of the Opportunities set out on page 9 of the Council's Corporate Business Plan 2016 -2020 refers to reducing the risk of flooding to properties through our contribution to the River Thames Scheme.

### **4. Resource implications**

- 4.1 There are significant resource implications arising from this project. The Capital contribution has already been dealt with and sits within the existing Capital Programme. Runnymede Borough Council services such as Planning and Environmental Services will be required to respond to the work requests of the Applicant in a timely manner although the costs will be met by the Applicant. Some costs may fall to the Council in the future under our own responsibilities as statutory consultee and Members will be informed of indicative costs as these become clearer as the programme progresses and we move towards the examination phase. Costs will also be incurred in undertaking the co-ordination role between Applicant and consultees; again, these costs are to be met by the Applicant and any financial risk is mitigated under the SLA which will confirm the mechanism by which these costs are to be reimbursed.

### **5. Legal implications**

- 5.1 As explained in the body of the report the Development Consent Order (DCO) is a particular process which can be used for obtaining permission for developments categorised as Nationally Significant Infrastructure Projects (NSIP). The DCO automatically removes the need to obtain several separate consents, including planning permission and is designed to be a much quicker process than applying for these separately.
- 5.2 The DCO process starts when an application is formally accepted by the National Infrastructure Planning Unit and lasts approximately 12-15 months. The process however, is front-loaded with a number of pre-application consultation requirements, which, depending on the complexity of the project, can take a long time to carry out.
- 5.3 In the DCO process various bodies are deemed statutory consultees that promoters of DCOs must engage with. Given the nature of the projects which fall within the remit of the DCO process responding to such consultations can be a costly exercise due to the sheer volume and technical nature of information associated with such schemes. By the promoters of a DCO providing financial assistance to statutory consultees they hope to speed up the process of securing the DCO. The provision of funding enables the statutory consultee to understand the process better and avoid delays which might flow from raising issues which are not relevant or can be resolved through adjustments to the scheme.
- 5.4 The process being adopted in relation to the RTS is not unusual. The promoters of the DCO are aware of the obligations which fall on the key local planning authorities and are prepared to provide funding to cover the work they have to undertake. What they will not fund is work associated with

opposing any aspect of the RTS. It has to be accepted that the respective local authorities will have to fund any such work from their own resources.

- 5.5 Whilst the applicants for the RTS DCO will procure the external consultant and enter into the legally binding contract with them it will be a term of the contract that services and assistance will be provided to the key local planning authorities. What is important to note is that the role of the external consultant is not to draft grounds to oppose the RTS but rather provide technical advice on the proposals. There will therefore be instances when the consultant might advise that whilst a particular aspect of the RTS might not be the best proposal it is still nevertheless acceptable in general terms.
- 5.6 The creation of a secretariat to support the work of the key local planning authorities is not unusual in this type of process where there are multiple parties with common interests. Issues which will need to be addressed are that whilst staff will be employed by one local authority they will in essence be employed on behalf of all the local authorities served by the secretariat. Such staff will be employed in fixed term contracts and be subject to the employment policies of the local authority which employs them. The interauthority SLA will deal with how any funding is provided to cover staffing costs.
- 5.7 The arrangements proposed in the report to deal with engaging in the DCO process are not unusual and are not unlawful. It has to however be borne in mind that the promoters of the DCO are not providing funding for the key local planning authorities to oppose the RTS but rather enabling them to respond to the consultation process in a meaningful way. What any of the local authorities involved in the process must be clear about is that if they oppose any aspect they must clearly state that at the appropriate time rather than merely agree to resolve it at a future date. Failing to adopt a clear stance on matters at the appropriate time can lead to confusion at a later stage, such as at the public examination stage of the DCO process.

## **6. Equality implications**

- 6.1 The RTS will not amplify any equality and diversity issues. There will be a requirement to assess any associated planning aspects of the scheme e.g. access, path and cyclways layouts, etc. These will form part of the DCO consultation.

## **7. Environmental/Sustainability/Biodiversity implications**

- 7.1 The RTS mitigates the impacts of flooding, assists in mitigating the impacts of climate change, will be constructed adhering to the highest standard of sustainability as possible and creates opportunities for increased biodiversity through the creation of wetlands and potentially woodland and grassland habitats which will be incorporated into the RTS.

## **8. Other implications**

- 8.1 The Secretariat will require the creation of at least 3 new staff posts. The precise function of the Secretariat will be detailed within the Applicant SLA. When this has been confirmed, the staffing requirements (number of people / grade, etc), together with employment and associated support costs will be determined. All agreed costs will be invoiced to the Applicant monthly.

8.2 The services of the LA Tech Consultant for the RTS will be procured by the Applicant and not RBC. The nature of this arrangement is set out in the Applicant SLA.

## 9. **Conclusions**

9.1 The purpose of this report is to seek the Committee's agreement to delegating the signature of both SLAs to the Chief Executive Officer on behalf of RBC in consultation with the Chairman and Vice-Chairman of the Corporate Management Committee.

9.2 The RTS is an opportunity to provide greater protection to residents and businesses in the Borough against major flooding. It is vital that RBC maintains its commitment to the Scheme in order to maximise the primary and secondary benefits which will be delivered by its construction.

9.3 The execution of the SLAs provides security of funding for the RBC Planning Authority to be fully involved within the DCO process and enable it to submit detailed responses to the ensure that the Scheme is fit for purpose. The SLAs also define and confirm the role of RBC as Coordinating Authority and host to the Secretariat and secure the funding for this function.

9.4 Not partaking in the SLAs will limit the capacity of RBC's Planners to respond to the DCO process in detail and limit our opportunities to influence the objectives of the scheme, including the expected positive effects on flood defence, adaptation and mitigation of climate change, biodiversity, and recreational opportunities.

**(To resolve)**

## **Background papers**

None stated