

To accept and spend £675k of LEP funding awarded to the council to spend on infrastructure works to make land ready for development at Hereford Enterprise Zone.

Decision maker: Cabinet member environment and economy

Decision date: Friday, 1 October 2021

Report by: Senior Project Manager - Capital

Classification

Open

Decision type

Key

This is a key decision because it is likely to result in the council incurring expenditure which is, or the making of savings which are, significant having regard to the council's budget for the service or function concerned. A threshold of £500,000 is regarded as significant.

Notice has been served in accordance with Part 3, Section 10 (General Exception) of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) Regulations 2012.

Wards affected

Dinedor Hill;

Purpose

The council has been successful in bidding for and securing an additional £675k Growth Deal funding from The Marches Local Enterprise Partnership (LEP) to undertake additional infrastructure work and create new employment land at Hereford Enterprise Zone (HEZ). This report seeks approval for the funds to be spent to deliver that additional infrastructure.

Recommendation(s)

That:

- (a) The council accepts and commits to spending of £675k funding from Marches LEP on HEZ infrastructure works as detailed within this report is approved.**
- (b) The Director of Economy and Place be authorised to implement recommendation (a) including the procurement and commissioning of new projects and all operational decisions following consultation with the S151 Officer.**

Alternative options

- 1. The only alternative would be to reject the decision to spend the £675k funding and not accept funds from Marches LEP. This would mean that projected jobs and employment land outputs (i.e. - 60 new jobs; 1.5 ha additional employment land) would not be realised. Existing funds would still be used to develop significant proportions of the North Magazine site, although further funding would be required to develop the remainder.
- 2. If the spend of the Growth Deal funding is not approved as suggested, there is potential for reputational impact to the council, of the relationship with the local community, Marches LEP, and Government, each of whom are stakeholders in the broader HEZ project. The Marches LEP and Government are likely to ask for an explanation of the decision. The consequence would be to not carry out the additional works or make the case to full Council for additional council money to fund these works.

Key considerations

- 3. The HEZ is the Government's designated government Enterprise Zone for the Marches Local Enterprise Partnership. The primary objective for Enterprise Zones is to become a catalyst for enhanced economic growth.
- 4. A specific company, Hereford Enterprise Zone Limited was set up to oversee progress with a private sector led Board. The council are represented on the Board by both elected members and by senior officers. The aim has been to maximise private sector investment and generate higher value jobs, using the Enterprise Zone status, profile and benefits to do that.
- 5. Considerable progress has been made in the HEZ. Over 57 acres of land has been sold or committed to development, which has resulted in the creation of 1000 jobs. One of the principal reasons for that success has been the prior preparation of the land so that it is development ready. This has meant that investors can purchase the land with the confidence that they can move on immediately and concentrate on building construction and then occupation.
- 6. This land preparation has been carried out utilising a £14,947k council capital programme budget, approved in 2014 (originally £16m but reduced when £5,432k of

LEP Growth Deal grant was accepted in October 2020), to be funded through capital receipts, in making land ready for start of construction onsite once an occupier has concluded a purchase.

7. The additional funding from Marches LEP (£5,432k) has also been used to sub-divide the North Magazine into smaller land parcels and develop further land around the wider Enterprise Zone in line with identified investor interest.
8. On 15 August 2019, Cabinet approved the Phase 5 budget for the HEZ infrastructure project, approving the allocation of the remaining £5,231k of the £14,947k total budget from the capital programme.
9. On 4 October 2020, the Council approved the proposal to accept and spend the additional £5,432k funding from Marches LEP.
10. The additional £675k funding enables the council / Hereford Enterprise Zone to develop an additional 1.5 ha of employment land thereby creating the opportunity for another 60 jobs. Note that these outputs are in addition to the currently contracted outputs with LEP, and represent a broadly proportional increase in overall funding requirement. Ultimately, funding will be used to encourage business investment, occupancy and jobs.
11. In order to make the land 'development ready', funds will be used to install the required infrastructure (e.g. – utilities; access / roads; earthworks/plot raising; drainage features; landscaping; cycleways/walkways; surveys; project management / consultancy).
12. HEZ has already completed the masterplanning exercise, detailed design work as well as open tender exercises for all activities to be undertaken in the delivery of these additional works. The procurement exercise carried out for the North Magazine Civil Works, leaves sufficient scope for the existing contract to be varied accordingly. Likewise, the plot raising (earthworks) tender covered up to £750k works, of which only £428k has been contracted to date. Variations will therefore be issued in relation to these two contracts (i.e. – North Magazine Civil Works; North Magazine Earthworks / Plot Raising) as well as the North Magazine Project Management Services contract, so that work can commence promptly. To ensure compliance with the council's CPR's, we will ensure that the cumulative value of variations does not exceed more than 50% of the original contract value. Formal variation documents will be completed and signed off by Commercial Services prior to additional work taking place.
13. The project will also help deliver a number of the priorities detailed within the County Plan 2020 – 2024 including Grow Jobs and keep unemployment rates low; Increase the number of short distance trips by sustainable modes of travel; Increase local wealth creation. The completion of the Shell Store Business Incubation space and the Midlands Centre for Cyber Security in 2021 on the Enterprise Zone will also provide a catalyst to the development of new businesses and higher value jobs. Construction of NMITE's Skylon Park campus buildings on the North Magazine has now also commenced. These developments will ensure the HEZ is also well placed to contribute to the 'Skill-up – Encourage continuous investment in our local workforce and a culture of lifelong learning in our community' County Plan priority.
14. The LEP requires that an additional £292.5k of match funding is evidenced by 2023/24 (this is within the current £14.947m HEZ capital budget) and the delivery of 1.5 ha of

built out employment land and 60 jobs by the end of 2023/24. These additional outputs are to be included in a revised funding agreement with Marches LEP, which will be issued following this decision.

Community impact

15. Through the direct facilitation of company growth by providing land and premises for expansion and relocation of businesses, the HEZ contributes to the council's County Plan 2020-24 and the economy section specifically where it meets the following ambitions:
 - Develop environmentally sound infrastructure that attracts investment
 - Use council land to create economic opportunities and bring higher paid jobs to the count
16. It is also a priority project within the Herefordshire Economic Vision and it could significantly support the goals of the scheme including growing the local economy, creating higher value jobs and supporting a great environment. The project will also support the goals for The Marches Strategic Economic Plan including Supporting Business and Physical Infrastructure.
17. Failure to proceed with these interventions will mean that council owned land may not be fully serviced or accessible. Experience on the HEZ (and elsewhere across Herefordshire) has demonstrated that there is no demand for employment land that is not fully serviced, and there is a chance that the council owned land would not be sold.
18. The council is committed to providing a healthy and safe environment for all individuals impacted by its coordinated activities. As a result the council endeavours to ensure that the work they and their partners undertake, does not adversely affect the health, safety or welfare of members of the public or visitors. Therefore, partners are required to work to the same high health and safety standards and approved codes of practice, as the council, as far as is reasonably practicable and any contracts will reflect this.

Environmental Impact

19. The North Magazine is a previously developed (brownfield) industrial site. Developing this out will allow business investment and development in a coordinated and efficient way making use of the existing transport network and infrastructure utilising close proximity to the city centre and avoiding development on greenfield land. Extensive remediation work is taking place including materials screening, asbestos removal and ground raising (in line with Flood Alleviation Scheme) using locally sourced materials.
20. Arisings from the infrastructure works will be screened and retained on site (where safe and practical to do so) where levels are due to be raised further. This will minimise waste to landfill and reduce the carbon footprint.
21. The North Magazine masterplan will concentrate development in a central platform, leaving a generous buffer of existing trees and vegetation to all sides. Precautionary

measures have been identified in an Ecological Appraisal undertaken in 2019. Recommendations (including enhancement measures) will be followed to avoid harm and injury to wildlife.

22. Proposals will introduce new habitats through native planting of trees, shrubs, wildflower meadow and nectar rich species. Within the woodland buffer area, invertebrate houses and bird boxes will further habitat opportunities. Long term management of the green infrastructure will follow strategies such as timed mowing regimes for meadow grass and retaining felled trees around the site will allow natural colonisation.
23. The longer term intention will be to provide public access to the woodland and the historic features surrounding the development area and connect these with the existing footpath network. Access will encourage public interest and ownership of the site to help conserve the heritage and ecology for future generations.
24. Infiltration will be targeted as the primary drainage methodology. A network of open linear and basin attenuation features will form a core part of the infrastructure, with enhanced landscaping planting to remove silts, metals and hydrocarbons before waters are discharged to the groundwater.
25. The subsequent development is being designed with environmental principles at its centre. This includes efficient flow and people movement; low impact build, low carbon footprint built with sustainable materials; minimising need for artificial heating and ventilation; optimising layout and build orientation to maximise daylight for heat gain; looking to utilise Ground Source Heat Pumps where possible; natural lighting strategies used wherever possible. The site design will also be expected to be future proofed to incorporate the provision of utility corridors, for example if a waste water recovery system or a district heat system were to be adopted in the future.
26. The masterplan sets out advanced activities to be installed and commissioned by the HEZ to serve the site as a whole, in advance of any other developments. There will then be requirements established for each development parcel which will be applied through the sales and planning processes. One of the objectives and expected outcomes of the completed masterplan will be to increase the biodiversity of the overall location. A specific biodiversity measurement project will be commissioned to review before, during and after works and report on the findings.
27. Sustainable travel measures will be installed as part of the project. Provision will be made for pedestrians and cyclists by providing routes into and through the site. These routes will connect directly into the Greenway which passes the southern boundary of the North Magazine and provides a direct link via a dedicated bridge to the city centre. Public transport is available with a bus serving the HEZ and bus stop provision will be made for this development. Park and Ride and Beryl Bike points are already installed nearby. Individual business investors will need to produce their own individual travel plans that fit within the wider HEZ Travel Plan. This will require the provision of their own infrastructure such as cycle shelters, showers, lockers and electric charging points.
28. Implementation of the wider Travel Plan will include improving the connectivity of nearby communities into and out of the HEZ, particularly providing better cycling and walking access from those areas to the west.

29. The HEZ has developed a specific sustainability assessment based on principles and standards from other sustainability schemes, around promoting and encouraging energy efficiency, energy monitoring, water saving and sustainable materials. New developments built by private investors are regulated through the Local Development Order planning process and are expected to achieve BREEAM very good or equivalent through the HEZ scheme. Specialist support is provided in helping new investors to develop their buildings to meet these standards. Any new development funded or built by the council will be expected to reach BREEAM excellent or above.
30. The HEZ Board is committed to working with the council to help it achieve its aspiration of carbon neutrality by 2030. The HEZ Board will develop a CO2 reduction strategy and action plan to contribute to the net zero carbon goal.

Equality duty

31. Under section 149 of the Equality Act 2010, the 'general duty' on public authorities is set as follows:

A public authority must, in the exercise of its functions, have due regard to the need to -

 - (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
32. The development of the HEZ will support the council's commitment to equality by advancing equality of opportunity, with the potential of increased job opportunities.
33. The impact of these proposals on some people within the nine protected groups as defined by the 2010 Equality Act is expected to be such that an Equality Impact Assessment will be required. A stage 1 EqlA screening assessment will be undertaken to confirm this.

Resource implications

34. The additional £675k funding from Marches LEP will be added as a new line to the capital programme, alongside the £5,432k funding from Marches LEP which was approved by cabinet in October 2020. (<http://councillors.herefordshire.gov.uk/ieDecisionDetails.aspx?ID=7214>), as well as the existing phase 5 capital budget (£5,231k) which was approved by cabinet in August 2019 (<http://councillors.herefordshire.gov.uk/ieDecisionDetails.aspx?Id=6182>).
35. Note that the phase 5 approved budget was reduced by £1,053k as part of the decision to accept the previous £5,432k LEP funding.

36. The table below provides a summary of how the £675k grant funding will be used alongside previously awarded LEP and Council funding.

Infrastructure Area	LEP Funding (2021/22) (£000's)	Previous LEP Funding (2020/21) (£000's)	Phase 5 Council (Approved) (£000's)	Total Requirement (£000's)
Spoil Heap	0	1,144	956	2,100
Utilities	0	900	600	1,500
General Plot Works	175	800	650	1,625
Access Improvements	500	2,588	1,619	4,707
Site Wide Improvements	0	0	353	353
TOTAL	675	5,432	4,178	10,285

37. The Council's Section 151 Officer has delegated authority and has added the grant of £675k LEP funds into the capital programme; this decision is needed to spend the funds as set out above.
38. Note that £292.5k of the phase 5 approved budget will be used as match funding in drawing down the £675k LEP funds. The match funding needs to be spent and evidenced no later than the end of the 2023/24 financial year.
39. Note that £3,059k of the phase 5 approved budget is already committed as match funding against the previously awarded £5,432k LEP grant. The £3,059k match funding can be dated back to December 2019 (in accordance with the LEP guidance), leaving sufficient headroom for an additional £292.5k to be used as leverage for the additional funds.

Legal implications

40. This additional funding is likely to be secured by way of a variation to the LEP Grant Funding Agreement dated 23 October 2020. The variation will secure the delivery of the additional 1.5 ha of employment land and creation of 60 jobs. All other terms of the grant funding agreement will remain unchanged. This will include an obligation to defray the grant funding by 31 March 2022 and deliver the 1.5ha of employment land by 21 March 2023 with the 60 new jobs being created by 31 March 2024.
41. The Marches LEP Grant Funding Agreement dated 23 October 2020, which will be varied to secure the additional monies, sets out milestones that must be met by the council in delivering the outcomes. If Shropshire Council determine that in their reasonable opinion that the outcomes will not be delivered by the deadline set out in

the variation the Grant Funding Agreement can be terminated and monies paid will become repayable.

42. Local authorities have a fiduciary duty to council taxpayers, business ratepayers and other providers of local government finance to balance the interests of those who will benefit from expenditure against those who have contributed to the funds of the local authority when expending significant amounts of money like in the present case. It therefore the likely benefits that will arise from the expenditure must be clear and that the way it will be spent gives value for money consistent with the council's best value duty.
43. There are legal duties on the council as landowner with regard to environmental remediation. The contaminated land regime as prescribed by the Environmental Protection Act 1990 is the statutory regime for remediation of contaminated land, which causes an unacceptable level of risk. Under the regime, local authorities must identify contaminated land and categorise it according to level of risk. Liability for the remediation of contaminated land passes to the current owner or occupier of the site unless the original contaminator can be identified (considered unlikely in this case). A site which has not been remediated will be significantly less attractive to a prospective occupier and any funder which supports them; therefore the council's proposal to address the remediation works itself, prior to sale, represents an appropriate course of action and a best value solution in the circumstances.
44. Subsidy Control is also potentially relevant to the remediation works to be undertaken. The council has been advised that in principle no subsidy issues arises where a local authority prepares its own land for subsequent sale, as long as the impact of the works is recovered by selling at a full open market value (and in accordance with S123(2) of the local Government Act. Accordingly, the expenditure on remediation works is considered to comply with the Subsidy Control regime.
45. The report makes it clear that works will be delivered by contractors that have already been commissioned in compliance with the Public Contracts Regulations 2015 ('PCR') and the council's own contract procedure rules.

Risk management

46. The following risks have been identified:

Risk / opportunity	Mitigation
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Financial	
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COVID-19 Impacts on spend/delivery timescales and demand for business space.	
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Monitor situation and government restrictions. Review processes and procedures to help ensure activities can continue within guidelines. Regular liaison with businesses which are interested in the site.
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Slippage of Local Growth spend in 2020/21

Establish agreed programme of works. Review progress at monthly project board meetings. Council match funding can be spent flexibly.

Budget overspend

Each element of the project will be costed before sign off and progress reviewed to ensure spend remains within the budget. Strict project management processes and cost consultancy expertise in place to ensure delivery within specified budget.

Inadequate procurement arrangements

Open tender exercises have already been carried out for all project costs. Variations to existing contracts will be required to deliver additional work.

Delays in implementing projects

Establish clear protocols for sign off and delivery of projects

Unexploded bombs or ordnance may be found within the works area

UXO Surveys already carried out. Considerable experience/expertise built up over the last 7 years.

Spend needs to be defrayed before end March 2022 to be eligible.

Delivery timescales include adequate contingency against potential slippage. Finance able to process next day payments in the event that funds need to be urgently defrayed.

Legal

47. Remediation requirements not met
- Develop and maintain full suite of information on contamination on site. Deal with any contamination appropriately utilising advice, and liaising with Environment Agency and council departments.

Subsidy Control Regime not followed

Ensure any work is done prior to plot sales. Land sales made at full market value.

Procurement rules not followed

Procurement of all contractors providing services to deliver these works will comply with Public Contract Regulations 2015 and the council's own contract procedure rules.

Reputational

Delays in implementing projects, leading to delays in sales, capital receipts, construction and business rates generation.

Clear, certain and swift processes in place to ensure sign off and implementation of projects.

48. Risks will be managed at a service level through the HEZ Programme Board.

Consultees

49. The political group's consultation procedures have been followed. All responses received from Councillors have been in support of the decision to accept and spend the additional £675k LEP funding.

Appendices

None

Background papers

None identified

Please include a glossary of terms, abbreviations and acronyms used in this report.