

Title of report: Revision of Capital Programme Budget for Priority Flood Works

Meeting: Council

Meeting date: Friday, 8 October 2021

Report by: Cabinet Member Infrastructure and Transport

Classification

Open

Decision type

Budget and policy framework

Wards affected

(All Wards);

Purpose

To consider the approval of in year adjustments to the capital programme to allow the realignment of capital spend to priority flood projects that require the reallocation of budget.

Recommendation(s)

That:

- a) **Council approves in year adjustments to the capital programme set out in paragraph 11 below to allow realignment of capital spend to flood repair projects that require the allocation of budget within the programme budget of £4.027m as follows:**

Fownhope Landslip Budget reduced from £1.565m to £0.510m

Fownhope Retaining Wall Collapse budget increased from £1m to £1.15m

Unallocated budget of £905k from combined Fownhope budgets remains as contingency for remaining flood works

- b) **The Cabinet member for infrastructure and transport is delegated authority (in consultation with the Section 151 officer) to realign the Whitney on Wye and/or the Various Damage site budgets as costs for these works are confirmed.**

Alternative options

1. Not to approve the proposed amendments. This is not recommended as:
 - a. This would mean that sums certified as due for works that were required to complete the Fownhope repairs could not be paid. The council would be in breach of contract and have acted contrary to the requirements of the Housing Grants, Construction and Regeneration Act 1996.
 - b. It may not be possible to complete all remaining Priority Flood Repair Works.
2. Not to seek a delegation to make the in-year amendments to the capital budget. This is not recommended as the re-alignment of the capital budget is within the overall programme budget envelope of the £4.027m allocated by Council for the repair of the Priority Flood Repair Works and therefore does not adversely impact on the council's financial position.

Key considerations

3. Storm Dennis hit Herefordshire during the weekend of 15 and 16 February 2020, resulting in significant damage and flooding, from both runoff and river overspill, with many of the rivers reaching their highest levels in 200 years. As part of a multi-agency response and recovery group the council successfully mobilised all resources to respond to the event.
4. The Bellwin scheme did not fund all repair needs following flooding in February 2020. With no further funding having been specifically made available by Government for recovery from Storm Dennis, the significant gap between what the Bellwin schemes provided and the cost of all necessary repairs, had to be met from within the capital programme.
5. A decision to progress priority flood repair works was taken under emergency powers at section 3.7.9 of the council's constitution on 30 April 2020.
6. Subsequently on 23 July 2020 cabinet considered funding options and made recommendations to Council for funding of the high priority repair works. On 4 August 2020 at an extraordinary council meeting council confirmed that the priority flood repair works project be added to the capital programme.
7. The decision taken by the Council on 4 August 2020 was that £4.027m (Priority Flood Repair Works) be added to the capital programme as a new programme; and that they were to be funded by extended prudential borrowing.
8. The £4.027m was made up from the following estimates:

Scheme	Estimated Cost
Fownhope Landslip (Lechmere Ley)	£1,565,000
Fownhope Retaining Wall Collapse	£1,000,000
Whitney on Wye Instability	£500,000

Various Damage Sites (67 No)	£962,000
Total	£4,027,000

9. As work has progressed on these priority flood works the true cost of the repairs has materialised and these differ from the original estimates made in the period following Storm Dennis. Consequently, project budgets are requested to be realigned to account for project outturn to date and enable all payments due for these necessary repair works to be made. This all with a view to completing the programme within the overall budget set for the entire programme of Priority Flood Repair Works.
10. Realignment of funding is required as follows:
- Given that:
 - the estimated cost for the repair of the Fownhope Landslip was £1.565m; and
 - the sum certified as due in accordance with the Public Realm Services Contract (PRSC) for this completed scheme is £0.508m,

approval is sought to reduce the budget for this scheme to £0.51m.
 - Given that:
 - the estimated cost for the repair of the Fownhope Retaining Wall Collapse was £1m; and
 - the sum certified as due in accordance with the PRSC for this completed scheme is £1.066m; and
 - c£36k of other expenditure has been necessarily incurred to gain access to land and provide revised public transport arrangements during the closure of the B4224 at Fownhope.
 - Further land and compensation costs may be incurred

approval is sought to increase the budget for this scheme to £1.15m.
 - It should be noted that:
 - the sum certified as due for the Fownhope Retaining Wall Collapse includes c£70k costs that have yet to be paid to BBLP and interest will be due on this late payment, funded from revenue budgets.
 - construction contracts are subject to the requirements set by the Housing Grants, Construction and Regeneration Act 1996. In the event that the contractor had to perform additional work to complete the construction, and the reason for that additional works is a matter which is identified as being at the client's risk, then the contractor is due to be paid that additional sum as part of the sums due to them. The sum due must be certified under the contract for payment.
 - council officers can only make payments in accordance with the authority delegated to them. Meaning that whilst the aforementioned sums are certified as

due, officers do not have the authority to make the payment that is due, unless the budget is realigned as described. Payment of Stone Cottage costs above approved budget have been withheld by Section 151 officer to date,

- as a consequence of this realignment the sums due for works done can now be paid in accordance with the PRSC and the requirements for payment in construction contracts as established by Section 111 of the Housing Grants, Construction and Regeneration Act 1996.
- Given that the:
 - report to Council on 4 August 2020 set the budget for this programme of Priority Flood Repair Works at £4.027m;
 - the total of realigned capital estimates for the two completed schemes is £0.905m below the total of the original estimates. Original costs were based on estimates produced shortly after the Storm Dennis flood events based on the level of anticipated works required at that time. This has been updated as the design were developed and works completed.
 - the service does not anticipate any substantial further expense in respect to works for both the Fownhope Landslip and the Fownhope Retaining Wall Collapse further to those set out above; and
 - a review of estimates for the necessary work that remain, which will be best completed following receipt of tenders and the detailed contemporary quantification of works on a site by site basis, may identify the need for an adjustment in the budgets required for the remaining elements of this programme.

the Cabinet member for infrastructure and transport is delegated authority (in consultation with the Section 151 officer) to realign the Whitney on Wye and/or the Various Damage site budgets as costs for these works are confirmed.

In summary the budgets for the Priority Flood Repair Works Capital Programme be realigned as follows:

Project	Original Capital Estimates	Realigned Capital Estimates	Rationale
Fownhope Landslip	£ 1,565,000	£510,000	To align to project outturn cost
Fownhope Retaining Wall Collapse	£ 1,000,000	£1,150,000	To align to project outturn cost
Whitney on Wye Instability	£500,000	£500,000	
Various damage Sites	£962,000	£962,000	
Unallocated Budget / Contingency within		£905,000	To account for uncertainty in the

overall programme budget			delivery of remaining schemes. This given that detailed scheme design has yet to conclude and approximately 18 months has passed since the original capital estimates were derived
Total	£4,027,000	£4,027,000	No change to programme budget

11. Council can provide a specific delegation for in year changes to the capital programme. This it is suggested is required to ensure that these vital works take place, as a decision for the cabinet member.
12. The remaining works comprise:
 - Completion of the Whitney on Wye design by BBLP through the Public Realm Contract followed by a tender process to secure a contractor to undertake the works outside of the PRC. Scheme costs will be reviewed as the detailed design is progressed prior to tenders being invited to undertake the repairs.
 - Award of contract to the successful contractor / tender to complete the 67 flood repair sites outside of the PRC. Costs will be updated following receipt of tenders and the detailed quantification of works on a site by site basis of the 67 sites.

Community impact

13. These highway maintenance and flood repair works will contribute to the County Plan 2020 – 2024 ambitions by protecting the environment, safe communities and providing infrastructure that supports our economy. The investment will ensure the network is resilient to the extremes of weather and ensure the safety and availability of the infrastructure for our public and users of Herefordshire’s highway network.

Environmental Impact

14. The council provides and purchases a wide range of services for the people of Herefordshire. Together with partner organisations in the private, public and voluntary sectors we share a strong commitment to improving our environmental sustainability, achieving carbon neutrality and to protect and enhance Herefordshire’s outstanding natural environment.
15. The allocation of funding for priority flood damage repairs and for works to enhance the resilience of the county’s infrastructure to future storm events will contribute to the

success of the County Plan by helping to increase flood resilience and improve residents' access to green space in Herefordshire via the highway network.

16. The council provides and purchases a wide range of services for the people of Herefordshire. Together with partner organisations in the private, public and voluntary sectors we share a strong commitment to improving our environmental sustainability, achieving carbon neutrality and to protect and enhance Herefordshire's outstanding natural environment.
17. The development of these works has sought to minimise any adverse environmental impact and will actively seek opportunities to improve and enhance environmental performance. This through minimisation of waste and enabling sustainable and active travel options across the county as a result of improvement in the condition of our highways and restoration of access throughout the highway network by the repair of flood damage.

Equality duty

18. Under section 149 of the Equality Act 2010, the 'general duty' on public authorities is set out 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.

The public sector equality duty (specific duty) requires us to consider how we can positively contribute to the advancement of equality and good relations, and demonstrate that we are paying 'due regard' in our decision making in the design of policies and in the delivery of services. Our providers will be made aware of their contractual requirements in regards to equality legislation.

Resource implications

19. The proposed resource implication is the realignment of capital funding within the sum decided for the works programme, this to enable the completion of all Priority Flood Repair Works and the payment of all sums certified as due for the completed works.
20. Project budgets are realigned to account for project outturn to date and enable all payments due to be made.

21. In summary the budgets for the Priority Flood Repair Works Capital Programme be realigned as follows:

Project	Original Capital Estimates	Realigned Capital Estimates	Rationale
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Whitney on Wye Instability	£500,000	£500,000	
Various damage Sites	£962,000	£962,000	
Unallocated Budget / Contingency within overall programme budget		£905,000	To account for uncertainty in the delivery of remaining schemes. This given that detailed scheme design has yet to conclude and approximately 18 months has passed since the original capital estimates were derived
Total	£4,027,000	£4,027,000	No change to programme budget

Legal implications

22. There are no legal implications arising from this in year change to the budget.

Risk management

23. Funding all priority highway repairs, including those needed as a consequence of Storm Dennis, will ensure that the council is meeting its duty to maintain the highway network as Section 41 of the Highway Act.
24. Realignment of the capital programme as set out above will take account of past and current uncertainty in the delivery of remaining flood repair schemes given that detailed design of all elements has yet to conclude and approximately 18 months have passed since the original capital estimates were calculated.

25. The wellbeing, connectivity and prosperity of residents and business across the County, and potentially in neighbouring Counties, be unduly compromised by the ongoing deterioration in the condition of the highway. This particularly if that deterioration necessitates further road closures on the grounds of safety.
26. Sites damaged by Storm Dennis in February 2020 have suffered further damage and deterioration and will continue to do so by the time repairs are actioned, resulting in the need for further repair work and an increase in the time and cost of the repair of all sites. Some contingency for this has been included for in the realignment as proposed.
27. Ongoing deterioration of the highway at these storm damaged site, coupled with the time that will elapse before repairs can be delivered by the chosen procurement route, will increase the likelihood and potentially severity of damage or injury to highway users and their vehicles, also the risk of damage to adjacent property will increase.
28. In addition to the need to meet the duty to maintain as established by Section 41 of the Highways Act 1980 through the response to all highway defects in accordance with the Highway Maintenance Plan, the unduly prolonged closure of any route will expose the council to risk that it is not meeting its network management duty as established by Section 16 of the Traffic Management Act 2004. Confirmation of the budget available for the remaining works will best enable the repair of all works.

Consultees

29. General Scrutiny Committee considered a report at their meeting on 22 September 2021. The agenda and the report can be viewed on the councils website by following the link below:
<http://councillors.herefordshire.gov.uk/ieListDocuments.aspx?CId=809&MId=8214&Ver=4>
30. The recommendations from this meeting were considered by cabinet at their meeting on 30 September 2021. The scrutiny committee's recommendations were accepted by Cabinet in full except for recommendation a; the executive agreed that a report of the requested breakdown would be provided to the scrutiny committee rather than included in this report to Council.

Appendices

None.

Background papers

None.