

# **Somerset West and Taunton Council**

## **Special Full Council – 1 December 2020**

### **Coastal Protection Works Associated with the B3191**

**This matter is the responsibility of Executive Councillor for Environment Cllr Sarah Wakefield**

**Report Author: Chris Hall - Assistant Director Climate Change and Assets**

#### **1 Executive Summary / Purpose of the Report**

- 1.1 Somerset West and Taunton Council, the Coastal Protection Authority, have received a proposal from Somerset County Council, the Highway Authority, with a view to undertaking works to protect the B3191 at Blue Anchor. If the scheme of work is accepted this council would deliver any agreed coastal protection scheme for the benefit of that community.
- 1.2 This proposal follows on from the previously approved request that Somerset West and Taunton Council use their status as the Coastal Protection Authority to deliver a scheme on behalf of Somerset County Council.
- 1.3 This proposal offers the funding necessary to deliver the scheme and a commuted sum so that Somerset West and Taunton Council may take all future ownership, inspection, and maintenance responsibilities for any newly created asset.
- 1.4 There is no immediate financial liability for Somerset West and Taunton Council.
- 1.5 This report is not a detailed review of the scheme design, this will be finalised with the designers and principle contractor as the project evolves over time. Consultation on any proposed scheme will take place with the appropriate bodies, parish councils, and impacted residents.

#### **2 Recommendations**

It is recommended that Full Council supports the following:

- 2.1 That Somerset West and Taunton Council agree in principle to accept responsibility and ownership for the coastal protection structure together with a commuted sum to cover estimated maintenance over the estimated lifecycle of the asset, provided that the new infrastructure is funded entirely by the Highways Authority, Environment Agency and or other external contributors.
- 2.2 Give authority for the Director for External Operations and Climate Change and/or

Assistant Director, Climate Change and Assets, in consultation with the Lead Member for Environment, the authority to negotiate the final funding agreement.

- 2.3 That Executive recommends to Full Council the approval of a Supplementary Capital Budget of £3,550,000 for the delivery of the long-term coast protection capital works, funded entirely by expected contributions from Somerset County Council and the Environment Agency.
- 2.4 That Executive endorses to Full Council an increase in the annual maintenance budget for coastal protection assets is included on the Medium Term Financial Plan, funded by the commuted sum to be received from Somerset County Council, upon completion of the works. The actual budget increases for expenditure and income will offset, with amount to be determined and approved by the budget holder in line with Financial Procedure Rules.
- 2.5 That Executive recommends to Full Council the approval of a Supplementary Capital Budget of £385,000 for the emergency works necessary are Blue Anchor, to be funded by the approved grant from the Environment Agency.

### **3 Risk Assessment**

- 3.1 Progression of this project seeks to mitigate a range of risks associated with coastal erosion and surface water runoff at Blue Anchor which currently present a risk to the road and a wider risk to the communities.
- 3.2 Along with the road there are a number of properties that are also at risk of being lost over the coming years. This scheme will be designed to mitigate these risks on a best endeavours approach.
- 3.3 The negotiated position presented is the best agreement that officers consider achievable with Somerset County Council. If Members are not able to support this it will be unlikely that further negotiation will deliver better results, leading to a risk that the scheme may not progress.
- 3.4 There will be financial risks associated with asset ownership, these are intended to be mitigated by Somerset County Council paying a commuted sum to Somerset West and Taunton Council in advance to cover these inspection and maintenance costs.
- 3.5 The value of the commuted sum will need to be agreed by both parties, this will necessitate an estimate being created. To prevent one party unfairly benefiting from this process it is proposed that the designers of the scheme will propose the value associated with future inspection and maintenance.
- 3.6 In the unlikely event that there is a material change to the offer following approval of this paper SWT will not be bound to deliver the scheme.

### **4 Background and Full details of the Report**

- 4.1 Somerset West and Taunton Council have been working with Somerset County Council and the Environment Agency for a considerable period of time to look for potential solutions regarding B3191 route integrity.
- 4.2 Somerset West and Taunton Full Council met on 7th July 2020 and agreed to use their powers as the Coastal Protection Authority to deliver any schemes that come forward

from Somerset County Council. SCC have now allocated funding to meet with the consultant's recommendation to protect the road in its current location at the Blue Anchor end of the B3191.

- 4.3 The history of the issues and past activity in this location was documented in the previous report (7th July) and remains available as a reference point.
- 4.4 The report only covers the Blue Anchor location of the B3191, there remains a similar erosion challenge at Cleeve Hill. SCC have a recommendation for this area but are not able to pursue this at this time.
- 4.5 This report is not intended to be a detailed review of the process followed by the County Council or their options, or recommendations, instead it seeks a commitment from Somerset West and Taunton to take ownership of the asset that it (SWT) will deliver through the professional contract frameworks.
- 4.6 The scheme is likely to consist of a rock armour revetment, with cliff grading and land drainage. The exact length of the scheme is to be determined by the design.
- 4.7 The cost of the scheme is estimated to be in the region of £4M; to be fully funded by Somerset County Council and the Environment Agency. A Somerset West and Taunton project manager will commission the scheme design and construction and contractors will be aware of the overall budget. Tenders will be limited to within the overall scheme costs.
- 4.8 Somerset West and Taunton have recently been successful in securing £100,000 from the Environment Agency to progress design works for both B3191 protection schemes, Blue Anchor (£50,000) and Cleeve Hill (£50,000).
- 4.9 During the negotiation and as part of a routine inspection of the existing structures at Blue Anchor, council officers and the Environment Agency identified a number of holes in the existing sea defence wall and voids to the rear. This structure is the closest point to the road and was recognised that an emergency repair was needed to prevent the loss of the structure.
- 4.10 A report was taken to Senior Management Team (annex C) setting out the issues and requested £200k of funding to undertake the emergency repairs as risk whilst a bid was made to the Environment Agency. This was approved and the first phase of the works were undertaken in June. The Environment Agency have approved the bid which was requested at £385k. This will allow for a greater level of repair and stability whilst decisions around the main scheme are being considered.

## **5 The agreement**

- 5.1 The outstanding questions of ownership, liability, and maintenance, have all been discussed and a compromise position reached. This was needed as the starting point for each Authority was not acceptable to the other. Whilst the detailed wording of the funding agreement is yet to be concluded the following heads of terms have been agreed at an officer level. These will form the basis of a funding agreement between the authorities.
- 5.2 Somerset County Council will be the primary funders of the work, there may be other contributions that limit their overall costs but they will hold responsibility for funding the scheme. Somerset County Council's contribution cannot be unlimited and we will work

as a project team to design and deliver the defence works within the overall budget. This is to be approved by SCC but is likely to be in the region of £4M. This amount is a reflection of the costs estimates from the consultants.

- 5.3 The assets will be designed and built by Somerset West and Taunton Council under the permissions previously provided by this Council and through the use of professional frameworks.
- 5.4 It is proposed that Somerset West and Taunton Council own the asset. Whilst concerns were expressed at the Full Council Meeting on 7th July 2020 the negotiated proposal would see Somerset County Council provide a commuted sum to the estimated value of the whole life maintenance costs. This figure will be established by the technical designers to be appointed by SWT and will be part of the funding agreement. Once set the commuted sum will be the limit of the maintenance budget for the asset, should costs exceed this amount SWT would have to fund these. It was for this reason that the designers were to set the commuted sum rather than SCC or SWT.
- 5.5 With this commuted sum Somerset West and Taunton Council will undertake inspections and maintenance of the asset and should therefore limit the financial risk to the authority.
- 5.6 Within the funding agreement we will establish a realistic liability that does not place an undue burden on either party. Specifically we will not become liable for the road should it fail despite the best endeavours approach that is proposed.
- 5.7 The asset life expectancy will be established by the final design. Works to date are identifying a scheme predominantly made up of rock armour which will require some maintenance and potentially topping up over the years. These schemes are less susceptible to sudden or complete structural failure as has been seen in sea defence walls. By design the rock armour dissipates wave energy in a more gradual way reducing likelihood of failure of the engineering scheme.
- 5.8 The Memorandum of Understanding has been signed off in accordance with the delegated authority provided at the 7th July Full Council meeting.

## **6 Next Steps**

- 6.1 Somerset County Council published a cabinet decision on the allocation of funds on 16<sup>th</sup> September 2020, this passed without call in.
- 6.2 Somerset West and Taunton Council will complete the emergency works to the existing sea defence wall and import approximately 1800tonnes of rock armour to buy time for the design and implementation of the main scheme. This work has been awarded funding from the Environment Agency and there are no cost to Somerset West and Taunton Council.
- 6.3 Somerset West and Taunton Council officers would engage with local land owners to secure the use of the private land necessary for access, storage, and construction of the scheme.
- 6.4 Establish a contract with designers to take forward the scheme, and start engagement with the contractors.
- 6.5 Establish a multi-agency project board and timeline of activity.

## 7 Links to Corporate Strategy

- 7.1 Theme Three of the Corporate Strategy 2020-2024, Objective 6 – Support the delivery of strong and sustainable transport infrastructure links including a greater provision of public transport across the district, as well as solutions which remove barriers to people using public transport to access work, training and leisure opportunities.

## 8 Finance / Resource Implications

- 8.1 There are no immediate requests for SWT finances attached to this report, and Members are not being asked to make a decision that places the Council as the funders of this project.
- 8.2 It is reasonable to assume that if SWT is to deliver the scheme then it will be SWT that holds the associated project budget, to be funded by contributions from the County Council, the Environment Agency and any other contributors.
- 8.3 It is expected that SWT will be the Accountable Body for this scheme as it is the recipient of the funding and will take all future ownership, inspection, and maintenance responsibilities for any newly created asset.
- 8.4 There are two elements to capital works included within this report, the approvals for which have been shown separately as they will be delivered as discrete projects or phases of work.

### Emergency Works:

- 8.5 As described in paragraph 4.10 above, emergency works have been started ‘at risk’ following SMT agreement. The success bid for grant from the Environment Agency funding means there is sufficient external funding to fully cover the costs of works. It is recommended that Council formally approves the budget for these works so the budget and costs are accurately reflected in the Council’s capital programme.

Table 1 – Emergency Works Budget

	2020/21 £
Capital Expenditure – Coastal Protection Emergency Works	385,000
Funded by: Environment Agency Grant	-385,000

### Long-Term Coastal Protection Works:

- 8.6 The costs of works are subject to detailed design and procurement, however this major project is estimated to cost £3,550,000. It is recommended to include this sum as a Supplementary Budget within the Council’s capital programme to properly account for and monitor costs. There is a contribution from the EA towards initial costs such as design fees, and the capital funding to be provided by Somerset County Council, which again means the costs are fully covered by external funding. Whilst the funding to be provided from SCC is not unlimited it is expected the total costs of the scheme (less the funding provided by the EA) will be fully funded by SCC. The capital expenditure will be recorded on the SWT balance sheet under infrastructure assets.

Table 1 – Anticipated scheme contributions

Source	2020/21 £	2021/22 £	Totals £
Total Capital Expenditure – Long-Term Coastal Protection Works	2,550,000	1,000,000	3,550,000
Funded by:			
Environment Agency Grant	-50,000		-50,000
Somerset County Council	-2,500,000	-1,000,000	-3,550,000
Total Funding	-2,550,000	-1,000,000	-3,550,000

#### Ongoing Maintenance:

- 8.7 The ongoing maintenance of the asset will need to be undertaken / commissioned by SWT in future, with the related costs to be included in the revenue budget. The County Council will provide a commuted sum up-front that can be drawn down over the life of the asset to mitigate future maintenance costs. Whilst there is no guarantee given the long term nature of the works, the expectation is that commuted sum will fully mitigate the costs over the long term. The amount of the commuted sum is to be confirmed, and it is recommended the annual maintenance budget is increased within the Medium Term Financial Plan, funded by the commuted sum income.
- 8.8 Advice received relating to the VAT status of this scheme is that as SWT is acting as The Coastal Authority it is not providing a supply so VAT is not chargeable. As the works are being carried out under the 'Coastal Protect Act', supply is deemed to be a statutory non-business transaction which would mean SWT could recover VAT paid in full.

## 9 Legal Implications

- 9.1 The statutory scheme in relation to coastal erosion is governed by the Coast Protection Act 1949 (“the 1949 Act”), as amended by the Flood and Water Management Act 2010 (“the 2010 Act”).
- 9.2 This Council is the Coastal Protection Authority (CPA) and holds the power but not the duty to deliver coastal protection schemes. The Shoreline Management Plan creates a recommendation to “hold the line”, this means that the Coastal Protection Authority has the power to intervene but places no statutory responsibility upon them to do so.
- 9.3 The council have used its CPA status under section 5 of the 1949 Act to carryout coastal protection work on an emergency basis to the existing wall. This work was notified to the Environment Agency.
- 9.4 The report recommends to Members that the council accept ownership, inspection and maintenance responsibilities for a new coastal protection asset. Were the scheme to fail, it could be argued that the Council had accepted a duty and then failed to discharge that duty properly and reasonably. Once that position had been established, it would be easier to make the claim that the Council should be paying for the costs of any clear up associated with that failure. There is however no assumption that any such challenge would be successful.

## 10 Climate and Sustainability Implications

- 10.1 Climate change will impact on the sea levels in the coming years. This report does not evaluate the effects of rising sea levels, but we would expect future designs of the engineering schemes to take account of these impacts.

## **11 Safeguarding and/or Community Safety Implications**

- 11.1 It is anticipated that the recommendations of this report improve the position for those immediately impacted and for the wider community through the support to Somerset County Council's scheme.

## **12 Equality and Diversity Implications**

- 12.1 There are no detrimental impacts on any of the protected groups as a result of this report and its recommendations.

## **13 Social Value Implications**

- 13.1 Any future procurement that will come from this will consider social value within the process.

## **14 Partnership Implications**

- 14.1 There are no formal partnerships impacted or created by the content of this report, but a formalised way of working will be agreed through the creating of the Memorandum of Understanding.

## **15 Health and Wellbeing Implications**

- 15.1 Protection of the impacted communities is at the heart of any scheme that may be delivered. Ensuring the safety of home, and connectivity of those homes to the nearby communities is the purpose of this report.
- 15.2 There will be implications for people's health and wellbeing should a scheme not be designed and delivered within a reasonable timeframe.

## **16 Asset Management Implications**

- 16.1 A decision to take on the asset comes with responsibilities for future inspection and maintenance liabilities. It is proposed that an independent party evaluate the costs of this and that evaluation forms a commuted sum transferred to Somerset West and Taunton Council.

## **17 Data Protection Implications**

- 17.1 There are no identified data protection implications

## **18 Consultation Implications**

- 18.1 Somerset County Council and their consultants WSP have undertaken consultation as part of their options appraisal. We will continue to work with other interested parties in an informal manner.

## **19 Comments from Scrutiny**

- 19.1 Scrutiny Committee considered this report on 14<sup>th</sup> October. They felt unable to support the recommendations that were presented to them and raised concerns over the ongoing costs of the assets in the event that the commuted sum failed to cover the necessary period of time. Additionally they were concerned about the long term liability for the asset at the end of its life and any impact that the design may have on other sections of the

coast line. They provided the following statement that was read out at the Executive committee on 20<sup>th</sup> October:

- 19.2 *“Whilst the committee wishes to support moves to protect the coastline and coastal communities, the Committee expressed significant concern about the potential for responsibility and long term liability and recommend exec and full council fully understand and request details on the long term liabilities going forward to ensure a full understanding of the longevity of the scheme and mitigate long term liability and risk.”*

## **20 Comments from Executive**

- 20.1 Scrutiny committee’s concerns were discussed by the Executive Members and it was considered that whilst there may be risks in the longer term for asset maintenance the offer presented to Council by SCC and the Environment Agency is more favourable than we could achieve from other sources and requires no financial investment from SWT at this stage or for many years to come.
- 20.2 Executive Committee supported the recommendations as presented by the portfolio holder.

### **Democratic Path:**

- **SMT – Yes**
- **Scrutiny –14<sup>th</sup> October 2020**
- **Executive – 20<sup>th</sup> October 2020**
- **Full Council – 1<sup>st</sup> December 2020**

### **Reporting Frequency: Once only**

### **List of Annexed items**

Annex A	Somerset County Council slides: Erosion regression line over the next 100 years Initial designs for engineering solution at Blue Anchor Realignment of B3191 at Cleeve Hill
Annex B	Somerset County Council Proposal to SWT
Annex C	Report to SMT on emergency works

### **Background:**

7<sup>th</sup> July 2020 Full Council decision to deliver works on behalf of Somerset County Council

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