
Report to: Cabinet
Council

Date of Report: 16 August 2012
6 September 2012

Subject: Channel Dredging Project (Part 1 report)

Report of: Director of Built Environment

Wards Affected: Linacre and Derby

Is this a Key Decision? Yes

Is it included in the Forward Plan? Yes

Exempt/Confidential No

Purpose/Summary

To review progress with the project for dredging the River Mersey; to seek delegated authority for grant to be accepted; and subject to receipt of grant, for the project to be entered into the Council's Capital Programme.

Recommendation(s)

Cabinet:

- (1) To note progress with the grant offer letter from Dept of Business Innovation & Science for £35 million of Regional Growth Fund (RGF) towards the cost of the Mersey channel dredge project.
- (2) To note progress with the negotiation of a Co-operation Agreement between Mersey Docks and Harbour Company (MDHC) and Sefton Council in respect of the Mersey channel dredge project and the extent of the proposed indemnity
- (3) To note the financial, legal and construction risks associated with the project, and in the event of a grant award to transfer the risks and corresponding mitigation plans to the Corporate & Community Risk Register
- (4) To note that should the grant be awarded that the Council will commence procurement for the dredge work immediately
- (5) To receive a further report on progress with the project

Council:

- (1) To note the Cabinet report
- (2) To include the channel dredge project within the Council's approved Capital Programme, subject to the receipt of grant

How does the decision contribute to the Council's Corporate Objectives?

	<u>Corporate Objective</u>	<u>Positive Impact</u>	<u>Neutral Impact</u>	<u>Negative Impact</u>
1	Creating a Learning Community		✓	
2	Jobs and Prosperity	✓		
3	Environmental Sustainability	✓		
4	Health and Well-Being		✓	
5	Children and Young People		✓	
6	Creating Safe Communities		✓	
7	Creating Inclusive Communities		✓	
8	Improving the Quality of Council Services and Strengthening Local Democracy		✓	

Reasons for the Recommendation:

To advise members of progress, and itemise potential risks and their mitigation.

What will it cost and how will it be financed?

(A) Revenue Costs

Officer time assigned to the negotiation of contracts is already accounted for in the approved revenue budget.

The Council is not a direct financial beneficiary of any monies secured, which will flow through to the private sector as stipulated in the legal agreement. However, under the terms of the proposed legal agreement, the Council is indemnified for all costs, liabilities and charges arising from its accountable body role in the delivery of the River Dredging project.

(B) Capital Costs

The project will be entered in the Council's Capital Programme, subject to receipt of funding and all conditions met as stipulated in the RGF offer letter.

Implications:

The following implications of this proposal have been considered and where there are specific implications, these are set out below:

Legal	
Human Resources	
Equality	
1. No Equality Implication	<input type="checkbox"/>
2. Equality Implications identified and mitigated	<input checked="" type="checkbox"/>
3. Equality Implication identified and risk remains	<input type="checkbox"/>
The equality impact and mitigation measures are as described in the full RGF application, and will be further developed when the offer letter is accepted.	

Impact on Service Delivery:

What consultations have taken place on the proposals and when?

The Head of Corporate Finance (FD1707) and Head of Corporate Legal Services (LD 1030/12) have been consulted and any comments have been incorporated into the report.

Are there any other options available for consideration?

Not to accept the RGF would be to forego access to additional resources at a time of considerable spending restraint.

Implementation Date for the Decision

Following the expiry of the "call-in" period for the Minutes of the Cabinet/Cabinet Member Meeting

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Background Papers:

Introduction

1. It was reported to members on 19th January 2012 that the Council was assisting Mersey Docks & Harbour Company (MDHC) with the development of a bid for Regional Growth Fund (RGF) to dredge the Mersey estuary channel.
2. This is to ensure the next generation of post-Panamax vessels can access the Port of Liverpool, and to improve river access for all users by lengthening the tidal window.
3. Members resolved (referring in the resolution to Peel Ports, the parent company of MDHC):

“1. That the conditional offer of £35 million from the Dept of Business Innovation & Science (BIS) to Peel Ports for River Dredging and construction of a River Berth at Seaforth, is noted.

2. That the Council accepts the role of accountable body for the RGF project, subject to negotiation of a satisfactory legal agreement with Peel, completion of due diligence, and an unconditional grant offer letter from BIS.

3. That officers proceed to negotiate a legal agreement with Peel in respect of the RGF project, and report progress to members at a subsequent meeting.

4. That members approve in principle the commissioning of a Port Hinterland study to provide a spatial masterplan and investment programme, so that the benefits of investment in Port Expansion can be maximised for local communities.”

Outline of project

4. Members will recall that MDHC is requesting £35 million of grant to support a £40 million investment in dredging the Mersey estuary approaches. This deeper channel will increase the tidal window for all river users of the estuary, and allow next generation deep-sea container vessels to access the docks.
5. The capital dredge will create benefits for all users of the Mersey and is therefore a “public good”. In these particular circumstances of their being a general public good it is appropriate that a public authority should act as accountable body for the RGF funding to procure the dredge. Sefton assumed this role as lead maritime authority for the Liverpool City Region.
6. As a result of the dredge, commercial operators located along the Mersey will take advantage of the deeper channel and longer tidal window.
7. The most advanced investment projects enabled by the dredge comprise
 - A new River Container Terminal for Peel Ports at Seaforth to receive post-Panamax vessels, planned to be operational from 2014
 - Port-centric distribution facilities adjacent the Port estate, These will be developed on-demand over the next 3-10 years

8. The Mersey Port Master Plan forecasts that by 2021 the Seaforth River Terminal will lead to a further 4,270 jobs and net additional GVA of £1,128 million.

Progress with RGF funding

9. Since the January 2012 report to Cabinet, officers have continued to negotiate with BIS regarding the criteria and conditions associated with the RGF grant
10. The principle condition to be met by the applicant (MDHC) is that the UK assistance is State Aid compliant i.e. that granting aid will not distort market forces. Initial legal advice obtained by the MDHC was clearly of the view that the activities would not be classed as State Aid. A recent European case means that this legal view needs to be revisited.
11. The Council's next steps will be dictated by the outcome of the State Aid enquiries being made by BIS and MDHC. This is the best way to maximise the Council's positive influence on the development as a whole, and makes for the most efficient use of natural and financial resources.

Next steps

12. Should the grant be awarded and be classified as non-State Aid, the next steps are to:
 - Approve the Co-operation Agreement
 - Complete "due diligence"
 - Satisfy BIS we are ready to proceed
 - Accept the RGF "unconditional" offer letter
 - Enter the project in the Capital Programme
 - Commence procurement for the dredge works
13. Because of the construction scheduling issue referred to in para 14 above, it is important that the Council's decision-making processes do not inadvertently delay procurement of the project contractor in the event of the Commission reporting favourably in late summer/early autumn. The main risk for the Council in this project which cannot be indemnified in the Co-operation Agreement, is the risk arising from delays. Such risks could emanate from delays in actions taken by officers or in the Council's internal decision-making. Quite understandably, this risk is excluded from the overall indemnification offered by MDHC.
14. The next available Council meeting to accept the project into the Capital Programme is 6th September, and then there is no meeting until 22nd November. Therefore members are requested to delegate acceptance of the RGF offer letter and agreement to the Co-operation Agreement to the Cabinet Member – Regeneration and Housing; and to request Council in September to receive the project into the Capital Programme, subject to receipt of grant.
15. This method of decision-making protects the Council's interest in the project while expediting business. It also demonstrates the Council's continued commitment to facilitate where possible this economic investment into the region. Taking this step allows for a flexible response in the event of further information received from the Commission or BIS that does not require a report to Cabinet.

Licensing and supervision of the capital dredge contract

16. The MDHC was granted a Harbour Revision Order in 2007 to dredge the channel, and will apply (either in its own name or jointly with the Council) to the Marine Management Organisation for a licence immediately prior to construction work beginning. Sefton Council is also a statutory consultee for the issuing of a licence, and members will have a further opportunity to consider the proposal at that stage.
17. As accountable body, the Council is directly responsible for the procurement of the dredging contract, which will be tendered under EU rules. Under the Co-operation Agreement, the Council will appoint MDHC as its managing agent to supervise the dredge. This arrangement makes the best use of both organisations' skills and best ensures accountability.

Key terms of the agreement

18. Before issuing an unconditional offer letter for the RGF funding, BIS require an agreement between MDHC and Sefton Council confirming their respective roles, responsibilities and obligations, both to each other and collectively. Officers have been closely engaged with MDHC in preparing this key document.
19. The key terms of the Agreement are:

Role, responsibility and obligations of Sefton Council

Recipient and accountable body for Regional Growth Fund

Appointment of a Sefton Project Co-ordinator to act on the Council's behalf

Undertake the procurement of the capital dredge

Obligation to notify MDHC of any issue having an adverse impact on the project or funding

Role, responsibility and obligations of MDHC

Assist the Council with the discharge of its obligations to BIS

Appoint a Programme Director/Project Manager

Assist with the procurement and delivery of the capital dredge

Agree to contribute £5 million towards maximum total cost of capital dredge of £40 million, even if the total cost is less than £40 million (subject to detailed cash flow profile agreed with Sefton MBC)

MDHC is responsible for excess costs above the £40 million agreed

Obligation to notify Sefton MBC of any issue having an adverse impact on the project or funding

MDHC is responsible for costs incurred by Sefton MBC in its role as accountable body as set out in a schedule

Joint responsibilities

To work together with all reasonable endeavours

To separately contribute to the due diligence process as BIS/CLG may require

To collaborate closely with each other in connection with the procurement process

To govern the project via (i) a Project Board of the Managing Director of MDHC and the Chief Executive of Sefton MBC, and (ii) a Steering Group of personnel from MDHC and Sefton MBC, that reports to the Project Board.

To collaborate closely on the maximisation of employment opportunities, local supply and community engagement through an agreed process

Warranty and Indemnity

MDHC will indemnify Sefton for any losses or liabilities arising from failure to complete the project in accordance with the RGF offer letter, or to achieve job targets, or funding clawback by BIS, or the dredging contractor, except insofar as they arise from failure of Sefton in relation to matters within its control or to act without the approval of MDHC where that is required under the provisions of the Offer Letter.

Confidentiality

No disclosure without agreement, except insofar as Sefton is bound by applicable law (Freedom of Information) or regulations.

Agree to a publicity protocol, jointly with BIS

Key risks and mitigation

20. A careful analysis of risks associated with the project has been undertaken. The risks for the Council and their mitigation will be transferred into the Corporate and Community Risk Register, and closely monitored and managed by the risk owner, Director of Built Environment.

Powers under which the Council is acting

21. The Council relies on Section 1 of the Localism Act 2011 in making these arrangements with MDHC.

Employment benefits

22. Under the terms of the RGF offer letter, Sefton is committed to creating 408 direct jobs (full-time equivalents) within 7 years of project completion. The Council and MDHC have reviewed the methodology used to calculate the jobs gain from the project and have agreed a procedure with BIS. This agreement will form the basis for monitoring of job outputs during each claim period.
23. It will also provide the basis for BIS to measure contract performance, as underperformance in terms of the jobs target may trigger clawback of grant (for which the Council has received an indemnification from MDHC – see above).
24. The Council and MDHC are committed to working together to develop a long-term employment partnership for the benefit of Sefton, and will invite other river users to join any collaborative recruitment and training arrangements that are established under this project but are of wider utility.

Wide Area Studies

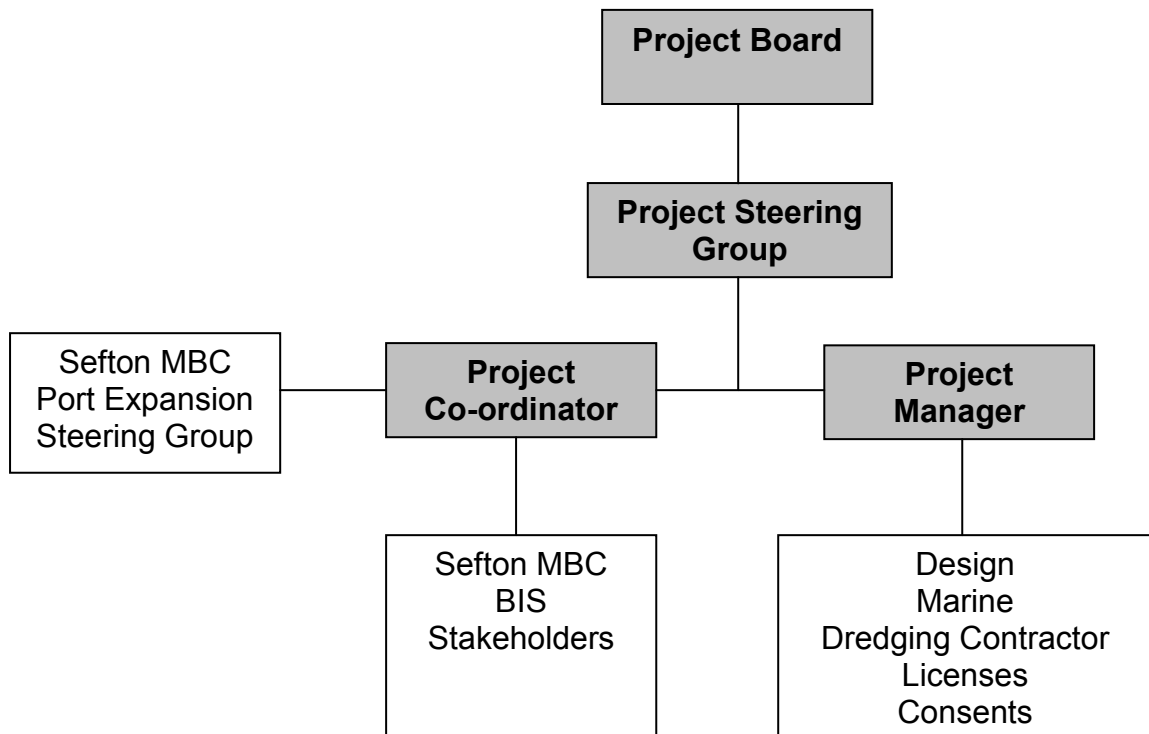
25. Under the Co-operation Agreement, MDHC promises a financial contribution towards the commissioning of a series of Wide Area Studies. These studies – in conjunction with funding from Homes & Communities Agency and the Council – will lead to a master plan and investment programme to capture and maximise the value of the Port's investment at Seaforth. They will also help update the land supply and demand estimates contained in the Core Strategy (now Local Plan).
26. The scope of these studies, plans and programme includes:
 - The creation of receptor sites for businesses displaced by port expansion
 - Site acquisition, assembly and development of the L5 zone for port-related uses
 - Attracting inward investment and supporting the maritime cluster
 - Employment, training and supply opportunities arising from port expansion, captured for the benefit of local people
 - Improvement and redevelopment of residential and community assets in the Seaforth area and the immediate port hinterland
 - Investment in Green Infrastructure (implementing the GreenPrint vision)
 - Harnessing opportunities for renewable energy and energy efficiency
 - Opportunities for environmental mitigation and to relieve neighbourhoods of unnecessary congestion and emissions associated with the A5036 corridor.
27. In addition MDHC and the Council will investigate innovative finance and delivery options, as flagged up in the City Region's City Deal "asks" of government.

Accountable Body role

28. MDHC has agreed to reimburse the Council (under its general indemnity) for any and all costs incurred by the Council in performing the accountable body function.
29. The schedule of costs is embedded in the agreement between MDHC and the Council, which includes provision for exercise of accountable body functions for up to an additional three years following project completion.

Future management of the agreement and RGF project

30. The management arrangements for the dredge project are detailed in the agreement between MDHC and the Council.
- Project leadership is through a Project Board of the Managing Director, MDHC and the Chief Executive Officer, Sefton Council
 - A joint Council/MDHC officer steering group provides oversight of the project and receives issues escalated by project management
 - Operational support is provided by the Project Co-ordinator (a Sefton employee), and a Project Manager (an MDHC employee).
31. To co-ordinate the Council's input to the project, a cross-departmental Port Expansion Steering Group for Council officers, chaired by the Director of Built Environment, has been meeting for several months. The group will continue with the participation of the Project Co-ordinator and Project Manager, to assist with a consistent policy and practice towards port-related activity across the authority.



32. The Project Co-ordinator's job is to ensure the Accountable Body role is delivered, either through their own work or by co-ordinating the work of others. They will co-ordinate procurement of the dredge contractor, engage closely with the project delivery team, supervise monitoring and claims, and account to members and the funder for the use of RGF. Further detail is supplied in Annex 1 – below.
33. The Project Manager's role is to secure all necessary consents and permissions, manage the dredge contractor, ensure targets and deadlines are met, and minimise any risks associated with the completion of the dredge project.
34. MDHC has appointed a person to the post of Project Manager. The Council is requested to establish the post of Project Co-ordinator within Built Environment

and to fill the post to ensure an early start – in particular, the procurement of the dredge contractor.

Reporting mechanism to members

35. Cabinet approved “in principle” participation in the dredging project in January 2012.
36. Since then, the Leader of the Council and Cabinet Member – Regeneration have received progress reports and briefings.
37. This report establishes a management and accountability framework for the dredge project. The Director of Built Environment is the named lead officer, reporting to Cabinet as a whole.
38. A Joint Overview & Scrutiny Working Party has been meeting to review the Mersey Port Master Plan. Its report is due in the summer. Officers have kept the Joint Working Party fully informed of the channel dredge project.
39. Ongoing accountability of the project to members will be via regular reporting to Cabinet and Cabinet Member – Regeneration & Housing, with such additional briefings or site visits as are requested.

Annex 1 – Proposed roles and responsibilities of Sefton Council as accountable body for the channel dredge project

Project Co-ordination

- Liaison with BIS DGLC - act as a single point of contact between Sefton and BIS DCLG
- Liaison with MDHC
- Project interface for other port users
- Represent the Authority on various internal working groups and external bodies

RGF Grant Management & Administration

Development and implementation of systems

- Develop, manage and maintain project management systems and procedures for the RGF project, including sound record keeping as required by Council's Internal Audit procedures and BIS/DCLG requirements.

Claim preparation, verification and validation

- Co-ordinate the preparation and submission of appropriate interim/final claims and monitoring returns in order to secure funds and ensure performance targets are met.
- Completing and submitting grant claims, monitoring and evaluation of claims and risk assessments.
- Ensure all Council Standing Orders and Financial Procedure Rules are upheld

Indirect outputs verification and validation

- Commissioning, procurement, payments, risk assessment, monitoring, co-ordination, returns, reports, and evaluation.

Audit preparation and facilitation

- Co-ordinating and managing the monitoring of the project for the purpose of audit and evaluation and to ensure compliance with the Council's and other funding Agencies' procedures.
- Co-ordinate internal and external verification and audit visits. This will include preparing files for audit and helping to ensure that auditing queries are dealt with appropriately.

Impact assessment procurement

- Commissioning, procurement, payments, risk assessment, monitoring, co-ordination, returns, reports, and evaluation.

Reporting

- Produce documents, Steering Group and Committee reports, liaising as required with Councillors and Officers of the Authority
- Presenting reports to Committees and other Partners

Internal Co-ordination

- Internal liaison with and co-ordination of colleagues from various departments with a stake in the RGF project ensuring a co-ordinated approach is adopted giving greatest benefit and return on investment:
 - Economy & Tourism
 - Sefton@Work
 - Finance
 - Legal
 - Corporate Procurement Unit
 - Investment Programmes and Infrastructure

Expert Advice

- Commissioning, procurement, payments, risk assessment, monitoring, co-ordination, returns, reports, and evaluation.

Procurement

Dredge

- Co-ordinate the preparation of a project brief
- OJEU Preparation inc stages
- Appraisal & Evaluation of Tenders
- Council Reporting Procedures
- Legals and Contractualisation

Liverpool 2

- Social Value element to MDHC procurement process

Dredging Contract

- Client side contract management
- Liaison with MDHC re monitoring and progress

- Invoice/payment verification and validation
- Environmental impact assessment and monitoring