

Phase 3 Public Realm

Final Decision-Maker	Policy and Resources Committee
Lead Head of Service/Lead Director	Dawn Hudd, Head of Regeneration and Economic Development
Lead Officer and Report Author	Fran Wallis, Local Economy Project Officer
Classification	Public
Wards affected	High Street, North and East

Executive Summary

The purpose of this report is to provide Members with information on the current budget requirement for the Phase 3 Public Realm works, now that tenders from contractors have been received.

In addition, it seeks approval to enter into a s278 agreement with Kent County Council to carry out the Highway Works.

This report makes the following recommendations to this Committee:

1. That delegated authority is given to the Head of Mid Kent Legal Services to enter into a s278 agreement with Kent County Council for the Phase 3 Public Realm Highway Works.

Timetable

Meeting	Date
Policy & Resources	8 th March 2018

Phase 3 Public Realm

1. INTRODUCTION AND BACKGROUND

- 1.1 When Phase 3 of the Public Realm was first presented to P&R Committee on 27th April 2016, the proposal was to upgrade the north end of Week Street and Gabriel's Hill/(part of) Lower Stone Street. Then in April 2017, P&R Committee approved the change in scope of the project to include the whole of Week Street – the area of Phase 3 therefore now stretches from Maidstone East Station all the way down to Gala Bingo.

Capital Funding

- 1.2 Although the committee agreed to the increase in scope last April, there was a recommendation to seek external funding to pay for the additional works.
- 1.3 A report was taken to Planning Committee on 13th July 2017, which gave approval to use the £100k s106 contribution from the Next store at Eclipse Park to go towards the Phase 3 Public Realm project.
- 1.4 The MBC Director of Regeneration and Place met with the Director of Highways, Transportation and Waste at Kent County Council in June, to seek a contribution towards the scheme. Unfortunately KCC have stated that they are unable to contribute towards the scheme.
- 1.5 A report was due to be taken to Policy and Resources Committee last year to update members on the budget; however it was felt that basing a commitment on an estimate was imprudent. Corporate Leadership Team (CLT) therefore agreed to delay the request to Policy and Resources Committee until tenders were received and the true cost was known.

Procurement Process

- 1.6 Tenders for the works were sent out on 5th January 2018, and submissions were received on Monday 19th February, with scoring and financial review carried out the following week.
- 1.7 Six tender submissions were received, and upon scoring the Quality aspect, 3 companies were extremely close. These three companies were therefore invited in to meet with the project team and go through their submissions to allow the project team to seek clarification on their application where appropriate.

Based on the tender submissions received, we are not currently expecting a shortfall on the project. An allocation of £3.1m was originally made in April 2016. The best tender submission is within budget, however due to various 'unknowns' particularly costs associated with utilities, the project team are retaining a large contingency sum for the project.

S278 Agreement

- 1.8 A section 278 (s278) agreement is required for this project. A s278 agreement is the legally binding document between MBC (as the developer) and KCC (as the highway authority) to ensure that the works carried out on the highway are completed to the standard and satisfaction of the Highway Authority. There is a fee associated with the s278 agreement which must be paid to KCC, however this has already been allowed for within the project costs.
- 1.9 This report is therefore seeking approval to enter into a s278 agreement with KCC to allow the works to be carried out.
- 1.10 It must be noted that an alternative option was found which could negate the need for a s278 agreement. Mid Kent Legal officers have identified an alternative section of the Highways Act (section 42) which would allow the Borough Council to take ownership of any roads which it specified (in this instance Week St and Gabriel's Hill) and to carry out the works without the need for a s278 agreement. S42 of the Highways Act does go further, to state that the borough council could implement s42 of the Highways Act, and request that KCC carry out and pay for the works themselves.

2. AVAILABLE OPTIONS

- 2.1 The first option is to give approval to the Head of Mid Kent Legal Services to agree to enter into a s278 agreement with KCC.
- 2.2 The second option is to pursue the alternative s42 of the Highways Act which would negate the need for a s278 fee.
- 2.3 The third option is to do nothing. The works cannot take place without a formal agreement between MBC and KCC. As stated previously this would normally be in the form of a s278 agreement to allow MBC as the developer to carry out works on the Highway.

3. PREFERRED OPTION AND REASONS FOR RECOMMENDATIONS

- 3.1 The option being recommended for approval is the first one in paragraph 2.1 which is to give approval to enter into a s278 agreement. This would allow the project to continue as planned and within the budget identified, since the costs of the s278 agreement are known (10% of the first £500k of construction costs, and 3% of the remainder of the construction costs). In this project this will be approx. £96,000.
- 3.2 The second option described in paragraph 2.2 is not recommended as there are various 'unknowns' relating to s42 of the Highways Act. Although officers in Mid Kent Legal are familiar with it, following a discussion at CLT it was felt that there are too many risks associated with it. For example, if MBC take ownership of the Highway we would be responsible for any repairs

and maintenance as well as granting permits which we do not have the capability to deal with. S42 of the Highways Act does go on to detail that MBC could request that KCC carry out the works at their own cost. However it was agreed at CLT that taking such action would harm our relationship with KCC and would no doubt be challenged by them adding delays to the project and legal costs.

- 3.3 The third option, 'do nothing' is not recommended as the works cannot take place without formal agreement from KCC.

4. RISK

- 4.1 The risks associated with this proposal, including the risks if the Council does not act as recommended, have been considered in line with the Council's Risk Management Framework. We are satisfied that the risks associated are within the Council's risk appetite and will be managed as per the Policy.

5. CONSULTATION RESULTS AND PREVIOUS COMMITTEE FEEDBACK

- 5.1 This project has already been presented to HCL, CHE and P&R Committees previously. This report merely provides an update, and seeks approval to enter into a s278 agreement.

6. NEXT STEPS: COMMUNICATION AND IMPLEMENTATION OF THE DECISION

- 6.1 Officers in Mid Kent Legal have received instruction to be prepared to enter into a s278 agreement, and a representative from Invicta Law, representing KCC, has also been allocated.

7. CROSS-CUTTING ISSUES AND IMPLICATIONS

Issue	Implications	Sign-off
Impact on Corporate Priorities	Accepting the recommendations will materially improve the Council's ability to achieve the corporate priority 'improving the town centre'.	Head of Regeneration & Economic Development
Risk Management	Already covered in the risk section	[Head of Service or Manager]
Financial	This report explains that the	Section 151

	Phase 3 Public Realm works, including the S278 agreement with KCC, can be delivered within already approved budgetary headings, so need no new funding for implementation. It is prudent to retain a contingency on this project as described in paragraph 1.8.	Officer & Finance Team
Staffing	We will deliver the recommendations with our current staffing.	Head of Regeneration & Economic Development
Legal	Accepting the recommendations will fulfil the Council's duties under s278 of the Highways Act. Failure to accept the recommendations without agreeing suitable alternatives may place the Council in breach of the Highways Act.	[Legal Team]
Privacy and Data Protection	No impact on data protection identified.	[Legal Team]
Equalities	The recommendations do not propose a change in service therefore will not require an equalities impact assessment	[Policy & Information Manager]
Crime and Disorder	The current recommendation will have no impact on Crime and Disorder.	[Head of Service or Manager]
Procurement	No impact on procurement identified	[Head of Service & Section 151 Officer]
