

REPORT TO:	COUNCIL
DATE:	14 th DECEMBER 2022
SUBJECT:	SUTTON ON SEA COLONNADE – SECTION 30 AGREEMENT
PURPOSE:	To seek Full Council approval to enter into a Section 30 Agreement with the Environment Agency in relation to the title deed of land impacted by the redevelopment of the Colonnade project site in Sutton on Sea.
KEY DECISION:	NO
PORTFOLIO HOLDER:	COUNCILLOR STEVE KIRK (COASTAL ECONOMY) COUNCILLOR RICHARD FRY (FINANCE)
REPORT OF:	ADRIAN SIBLEY, DEPUTY CHIEF EXECUTIVE (PROGRAMME DELIVERY)
REPORT AUTHOR:	JON BURGESS, DEVELOPMENT MANAGER (ECONOMIC GROWTH)
WARD(S) AFFECTED:	SUTTON ON SEA
EXEMPT REPORT?	NO

SUMMARY

The report seeks approval for the District Council to enter into the appended Section 30 Agreement with the Environment Agency (EA) in relation to the title deed of land which is impacted by the proposed and approved Towns Fund Investment Plan project to enhance the Promenade and Pleasure Gardens setting. The final copy of the Agreement follows a lengthy and detailed process of negotiation with the Environment Agency which has also informed additional amendments to the final site layout. The recommendations have been considered and endorsed by the Council's Executive Board to proceed to Full Council for formal agreement and resolution.

The Agreement places a future financial liability on the Council to contribute up to a maximum of £750,000 over a fifty-year period towards future sea defence enhancement works where the Council's new investment into the Colonnade facilities can be proven by the EA to have directly resulted in an uplift in costs for the Agency to improve the adjacent sea defence structures. It is unlikely (outside of emergency events) that the Agreement will be called upon for at least five years from the point of signing to enable the Agency to conclude their future coastal adaptation strategy from Saltfleet to Gibraltar Point and to secure the resources required for their baseline investment plan and programme for the future enhancement of the sea defences.

RECOMMENDATIONS

That the Full Council authorise for the Chief Executive, S151 Officer or Deputy Chief Executive (Programme Delivery) to enter into the Section 30 Agreement on behalf of the Council with the Environment Agency, as provided at Appendix A.

REASONS FOR RECOMMENDATIONS

- *To formally resolve and remove the holding objection from the Environment Agency in relation to the Sutton on Sea Colonnade planning application (ref: N/110/00176/21).*
- *To enable the Towns Fund Investment Plan project to progress towards completion of the detailed technical design, cost certainty and procurement of the main contractor, based on the resolution of the detailed planning consent and associated conditions and agreements being in place.*

OTHER OPTIONS CONSIDERED

- **Do nothing** – the holding objection to the deposited planning application would remain in place and the scheme would not be viable to proceed with, resulting in the loss of Town Deal funding towards the proposed development.
- **To condition the signing of the Section 30 Agreement as a pre-commencement condition of the planning process or to seek alternative legislative mechanisms to establish the same principles** – the Environment Agency have confirmed that they will refer the application to the Secretary of State if it is approved without a signed Section 30 Agreement being in place before consent is granted as they do not have any subsequent call in powers on the discharge of planning conditions. The EA have not been willing to consider any alternative consents, permits or agreements to cover the Section 30 requirements.

1. BACKGROUND

1.1. In October 2020, the District Council submitted a new Investment Plan for Mablethorpe to HM Government under the Towns Fund prospectus and call for funding applications. The Plan included a project to redevelop the Colonnade at Sutton on Sea. The Investment Plan was approved in March 2021, and the Full Business Case for the Colonnade project was approved following HM Government and HM Treasury Green Book appraisal in May 2022.

1.2. At the same time, the Council's aspirations and detailed designs for the replacement of the previous Colonnade structure have been established since October 2020 following a period of public consultation and display of the proposed scheme in February 2020. All technical design matters on the deposited planning application (ref: N/110/00176/21) have since been resolved. The only exception remains a holding objection submitted by the Environment Agency which is incumbent upon the Council entering into a separate Section 30 Agreement with the EA before the decision notice is granted. If consent is granted prior to the Section 30 being resolved, the Agency have confirmed that they will refer the decision to the Secretary of State.

- 1.3. The Section 30 Agreement is a legal document which places a financial liability upon the District Council to contribute towards an uplift in the costs of future sea defence enhancement works which can be demonstrated by the Agency to have directly resulted from the new Colonnade structures and investment being in place.
- 1.4. The Section 30 Agreement is legally binding on the owner of the title of the land where the new Colonnade works are being undertaken. It therefore applies to the District Council and all future successors in title or ownership.

2. REPORT

- 2.1 The EA has the power under section 165 of the Water Resources Act 1991 to undertake flood risk management works that the EA considers to be desirable to manage flood risk. There is the power under section 165(5) of the Water Resources Act 1991 which enables the EA to enter into an agreement with any local authority for the carrying out by that authority, on such terms as to payment or otherwise as may be specified in the agreement, of any work which the EA is authorised to carry out under this section (being flood risk management works). In simpler terms, the requirement from the EA for the District Council to enter into a Section 30 Agreement in relation the new Colonnade scheme is backed up by legislative powers. This position has been verified by the Council's own legal advisors.
- 2.2 During a lengthy period of negotiation and following appointed legal advice, the Council has sought to challenge the EA's position and precedent on the Section 30 Agreement requirement. It has also explored a number of alternative legislative mechanisms to achieve the same objectives as the proposed Section 30 Agreement, including a Section 106 Agreement, a Grampian style planning condition and an environmental permit. The Agency have retained their stance on the Section 30 being the required.
- 2.3 On this basis, the Council has successfully managed to establish a number of amendments to reduce the extent of the liabilities within the initial Agreement. In practical terms, this has resulted in the inclusion of a fifty-year time frame over which the Agreement can be called upon by the EA. It has also introduced a maximum financial cap of £750,000 of liable (evidenced) costs for which the District Council would be liable for over the life of the Agreement. The final copy Agreement has also been enabled by an additional revision to the deposited planning application, which has amended the original site layout and positioning of the main pavilion and overnight lodges structures, whilst still maintaining the proposed mix of uses facilities and enhancements.
- 2.4 There are additional clauses within the Agreement to cover dispute resolution and future disposal arrangements of the Colonnade assets to which the Section 30 Agreement covers.
- 2.5 The final clean copy of the Agreement is attached at Appendix A and has been endorsed by both organisations' legal advisors, with Browne Jacobsen acting on behalf of the District Council.

3. CONCLUSION

- 3.1. It is clear that the requirement for the Council to formally enter into a Section 30 Agreement with the Environment Agency on the Colonnade project site must be formally resolved before any planning consent for the approved technical and construction works can be granted. Failure to do so would render the current scheme unviable to proceed with and not enable delivery works to progress beyond their current status. This would also represent a failure to draw down the allocated Towns Deal funding or address the opportunity to provide new investment into Sutton on Sea promenade and surrounding areas, following demolition of the previously decayed Colonnade structure.
- 3.2. The Council has undertaken detailed and lengthy negotiations with the Environment Agency to reduce the extent of the liabilities and limitations within the final agreement, whilst at the same time ensuring that the final development scheme does not adversely impact on the ability of the Agency to maintain local community safety by ensuring sufficient access to inspect, repair and enhance the adjacent sea defence structures. Through this process the Council has successfully moved from a position where the proposed Section 30 Agreement was completely open ended in terms of its financial liabilities and timeframe, to an amended template where the total maximum financial liability and the period over which this can be called upon by the EA to evidence their uplift in associated costs are both restricted and quantified.
- 3.3. The final agreement is therefore considered to represent the best available terms upon which to enter into a Section 30 Agreement, in accordance with the EA's legislative control and powers. Further challenge on the need or additional negotiation on the terms of the Agreement would not be expected to remove the requirement or reduce the limitations of the final copy any further for the Council. The Council is acting as a developer in delivering this project and as such recognises that entering into a Section 30 Agreement is a necessary part of the development process in these circumstances.
- 3.4. It is therefore recommended that the Council follow the Executive Board's endorsement and recommendation for the Council to enter into the Section 30 Agreement with the Environment Agency on the basis of the negotiated terms outlined in the appended final copy.

EXPECTED BENEFITS TO THE PARTNERSHIP

Delivery of the Towns Fund programme is included within the Partnership Business Case and Annual Delivery Plan for 2022/23. Progressing towards the delivery phase of the Colonnade project, as released through the signing of the Section 30 Agreement, will support delivery of a number of the Partnerships' ambitions around Economic Growth. The South & East Lincolnshire Council's Partnership recognises that East Lindsey has a significant visitor economy comprising of the Wolds, Market Towns and coast. It also recognises that the Council has a strong approach to supporting the sector and that extending the visitor economy/season is a local priority, alongside raising the profile of the visitor offer across all three Council area.

IMPLICATIONS

SOUTH AND EAST LINCOLNSHIRE COUNCIL'S PARTNERSHIP

The Section 30 Agreement places a legal obligation on East Lindsey District Council and its successor organisations, or successors in title relating to the Colonnade project, to cover an uplift in future sea defence enhancement costs as a direct result of the new Colonnade investment being completed, to a maximum financial threshold of £750,000 of evidenced additional costs over a fifty year period from the date of signing.

CORPORATE PRIORITIES

The District Council's vision for the visitor economy in East Lindsey is an expansion of tourism and leisure activities, improvements to the visitor experience, extension of the tourism season, and a complementary relationship between the green, cultural, heritage and sporting offer and the strong traditional offer. Working with our local businesses and lead delivery/support partners the Council aims to ensure that coastal communities will be seen as good opportunities for investment because of a secure water supply and effective coastal management, planning policy that supports growth and the environment, and a thriving visitor economy that benefits local communities and visitors alike.

STAFFING

None

CONSTITUTIONAL AND LEGAL IMPLICATIONS

As outlined in the report. The contractual negotiations with the Environment Agency have been informed by the Council's commissioned legal advice via Browne Jacobson LLP, which has been procured under the EM Law Share framework. The final content and formal process for entering into the Agreement has been considered by the Council's Senior Leadership Team and is subject to Executive Board endorsement and Full Council approval, in line with the Council's constitution.

DATA PROTECTION

None

FINANCIAL

The associated financial liabilities and thresholds associated with the Section 30 Agreement are outlined in the report. Further detail, including the process by which the Environment Agency must evidence the liable costs for further Council agreement, are provided within the appended Agreement. Whilst this is classed as a contingent liability and will be held on a register as such it is below the Council's materiality level of circa £1.5m so it is not anticipated it will be included in the Council's accounts as a separately disclosed matter. Additional financial provision other than existing reserves will not be required at this time.

RISK MANAGEMENT

Entering into the Agreement does not automatically trigger any payments to the EA, which must still be based on the Agency providing (and the Council agreeing) the necessary evidence to demonstrate the uplift in costs directly resulting from the new Towns Fund Investment Plan project for the Colonnade. Outside of any emergency events, this evidence is unlikely to be in place until such time as the future coastal adaptation strategy is determined, costed and programmed for the East Lincolnshire coast. At this time, no future sea defence solutions for Sutton on Sea or the wider

Saltfleet to Gibraltar Point shoreline have been identified by the Agency who are continuing to consult on future design options and interventions, before presenting the business case to HM Government for approval of their baseline funding requirements. There are no proposals within the EA's current five-year capital programme to invest additional resources in the Sutton on Sea defences. On that basis, the financial threshold of £750,000 is a maximum liability rather than an exact or profiled cost pressure at this point. Excluding emergency provisions, the earliest point at which any contribution is likely to be called upon would be 2027 based on the EA's current capital commitments and the additional time needed to secure an agreed implementation plan and funding to enhance the sea defences impacted by the Section 30 Agreement.

The Council are already landowner of the Colonnade site, the risk management authority and local planning authority relating to future sea defence works. This ensures that the Council will continue to have strategic oversight, input and influence on the baseline interventions that are being proposed to HM Government as part of the final coastal adaptation strategy for programming and resourcing future sea defence enhancement works on the East Lincolnshire coast.

STAKEHOLDER / CONSULTATION / TIMESCALES

The deposited planning application has been in the public domain since February 2021 with all statutory consultee comments having been addressed on design matters. Additional project reports have been reported, minuted and published via Connected Coast Board papers. Lead and local Ward Members have been kept informed via Portfolio Holder and direct officer briefings. Opportunities for direct face to face consultation during the project development cycle have been limited due to social restrictions and there has often been limited delivery progress to report publicly due to the ongoing negotiations with the Environment Agency on the Section 30 Agreement. A press release was issued on the 28th September 2022 by the Council to highlight the scheduled submission of revised site layout plans, which included comment from both the District Council and Environment Agency on the concluded design negotiations.

The key milestone within the approved Towns Fund Full Business Case is for the new facilities to be completed and operational by Easter 2024. The programme remains on track to achieve this deadline as the latest design amendments result in a shorter construction phase. It is targeted that the physical construction works will commence on site by April 2023.

REPUTATION

The redevelopment of the Sutton on Sea Colonnade has been long established as a project within the Council's capital programme and the Council's application to redevelop the site in line with previous community consultation has been deposited since early 2021. The previous Colonnade structure was condemned as structurally unsound in 2019 and demolition completed in May 2021.

In terms of reputational risk and challenge it is important that visible progress is made in terms of bringing the intended scheme to fruition in order to give the local community, businesses and visitors confidence that the current site will be revitalised. There is an additional reputational risk with HM Government that the project fails to remain on track for completion as outlined in the Full Towns Fund Business Case. Delivering the scheme on time will continue to establish a robust track record on the Partnership's ability to deliver and leave us well placed to secure additional growth funds into our local communities.

CONTRACTS

None

CRIME AND DISORDER

None

EQUALITY AND DIVERSITY/ HUMAN RIGHTS/ SAFEGUARDING

None

HEALTH AND WELL BEING

None

CLIMATE CHANGE AND ENVIRONMENTAL IMPLICATIONS

The Section 30 Agreement provides a mechanism to ensure that the standard of the future sea defence enhancements connected to the Colonnade project site are consistent with the wider coastal adaptation strategy of the Environment Agency once the final designs, cost plan and programme have been finalised by the EA.

ACRONYMS

EA – Environment Agency

APPENDICES

Appendices are listed below and attached to the back of the report: -

APPENDIX A	Section 30 Agreement
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BACKGROUND PAPERS

Background papers used in the production of this report are listed below: -

Document title	Where the document can be viewed
Mablethorpe Towns Fund Investment Plan	https://connectedcoast.co.uk/plans/
Sutton on Sea Colonnade Full Business Case	Major Projects Drive (ELDC)

CHRONOLOGICAL HISTORY OF THIS REPORT

Executive Board Briefing – 09/11/22

Executive Board – 30/11/22

REPORT APPROVAL

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