

Divisions Affected: Eynsham

**CABINET - 22 JUNE 2021**

**A40 HIF2 SMART CORRIDOR IN PRINCIPLE USE OF STATUTORY POWERS**

**Report by Corporate Director Environment and Place**

**RECOMMENDATION**

The Cabinet is **RECOMMENDED** to:

- (a) approve in principle the development of The Oxfordshire County Council (A40 HIF2 Smart Corridor) Compulsory Purchase Order 202[x] in parallel with negotiations for private acquisition, with such powers of compulsory purchase used only as a matter of last resort, in order to bring forward the timely development of the A40 HIF2 Project. Formal authority for the making of The Oxfordshire County Council (A40 HIF2 Smart Corridor) Compulsory Purchase Order 202[x] will be reported to Cabinet, and necessary approval sought, following public engagement on preferred options and submission of a planning application for the scheme;
- (b) approve the preparation and service of statutory notices for the Requisition of Information pursuant to Section 16 Local Government (Miscellaneous Provisions) Act 1976 (as amended) to assist with determining the interests in the land required for the delivery of the scheme;
- (c) approve the preparation of The Oxfordshire County Council (A40 HIF2 Smart Corridor) Compulsory Purchase Order 202[x] in draft , together with a draft Order Map, draft Order Schedule, draft Statement of Reasons and all necessary land referencing activity in advance of seeking formal authority to make the Order;
- (d) approve the preparation of The Oxfordshire County Council (HIF2 Smart Corridor – A40 Classified Road) Side Roads Order 202[x](or multiple Side Roads Orders as may be necessary) to enable the stopping-up, diversion, alteration, improvement and creation of new lengths of highway or reclassification of existing highways. This includes the stopping up of private means of access as necessary where the scheme design necessitates. Formal approval for the making of Side Roads Order(s) will be reported to Cabinet, and necessary approval sought, following public engagement on preferred options and submission of a planning application for the scheme;
- (e) subject to the confirmation that the required due diligence has been completed to manage programme and financial risk to the Council, authorise the Corporate Director Environment and Place,

**in consultation with the Director of Law & Governance, Director of Finance, Cabinet Member for Travel and Development Strategy and Cabinet Member for Finance to approve the amended Grant Determination Agreement (GDA);**

- (f) subject to the satisfactory completion of recommendation (e) approve the additional £4.745m Housing Infrastructure Fund grant for an overall budget provision of £106.756m for the A40 HIF2 Smart Corridor project within the capital programme, subject to the implementation of the Grant Determination Agreement with Homes England.**

## **Executive Summary**

1. This report is technical in nature due to the fact that it is intended to be used as a part of the documentary evidence base throughout the statutory processes to which it relates.
2. Oxfordshire County Council (OCC) submitted a business case for HIF2 in March 2019. In November 2019, it was announced that the bid had been successful (subject to contract) in securing £102m of grant funding towards a package of transport improvements proposed along 10.8km of the A40 corridor between Witney and Duke's Cut (North Oxford).

### Scheme Purposes

The purposes of the A40 HIF2 Smart Corridor transport scheme are to:

- increase transport capacity along the A40 in West Oxfordshire;
  - provide greater travel choice and encourage more use of bus, cycling and walking;
  - deliver faster and more reliable bus journey times;
  - improve safety and reduce environmental impacts such as air pollution and noise;
  - improve accessibility and connectivity to employment and public services;
  - support housing delivery in West Oxfordshire;
  - promote economic growth in Oxfordshire and creation of new jobs.
3. The A40 road corridor west of Oxford is a heavily constrained route. Oxfordshire's Local Transport Plan, Connecting Oxford states that *"Congestion on the A40 to the east of Witney causes very lengthy delays for journeys to and from Oxford at peak times. This impacts on the ability of local businesses to achieve growth and makes...a less desirable place for new businesses to locate. Bus services are vulnerable to delay because of congestion within Witney, through Eynsham and approaching Oxford on the A40"*.
  4. Therefore, the primary focus of HIF2 is the provision of additional highway capacity and connectivity to encourage/facilitate modal shift, enabling more sustainable forms of travel to meet the Council's zero carbon transport network ambitions focussing this around public transport, walking and cycling. Delivery

is also intended to promote wider health and place shaping benefits in line with the Council's key priorities.

5. The scheme will not only expedite a significant level of transport benefits but directly unlock 4,813 new homes (including 2,222 affordable homes) and support the delivery of more than 10,000 new homes in total in the West Oxfordshire area committed through the Local Plan 2031.
6. A schematic plan of the A40 corridor's programme and its related housing is included as Figure 1.
7. In summary, the HIF2 scheme includes three key highway elements, namely;
  - Element 1: A40 Dual carriageway extension - between Witney and Eynsham, approximately 3.2km in length
  - Element 2: A40 Integrated Bus Lanes, approximately 7km in length
  - Element 3: A40 Duke's Cut capacity and connectivity improvements across canal and railway bridges, approximately 0.6km in length
8. The related and interdependent Science Transit scheme, primarily funded by retained Local Growth Funded from Department for Transport (DfT) includes:
  - Park & ride at Eynsham
  - A40 East bound bus priority Lane.
9. Subsequent to the funding announcement and a further period of work to develop the schemes and agreements, Cabinet resolved to approve the recommendations as set out in a report in July 2020 and the Grant Determination Agreement was subsequently entered in to (28<sup>th</sup> August 2020) with Homes England to secure the funding, subject to conditions.
10. Following the report to Cabinet, a further phase of development work has been undertaken to identify preferred options for each of the three elements. These preferred options are the basis of recent stakeholder engagement and consultation undertaken, the results of which will be reported to Cabinet in July 2021.
11. Following further review Homes England have agreed to extend their funding allocation to cover all current scheme costs, subject to an amended Grant Determination Agreement (GDA) to the value of £106.756m.
12. The grant funding will need to be spent by February 2025, subject to approval of the recommendation to amend the current GDA.
13. The delivery of the HIF2 project is supported by a dedicated project team, which sits within the A40 Programme business unit, within the Growth and Economy Directorate.
14. Key milestone dates for the delivery of the project are outlined in Table 2 of this report.

15. There are a range of current issues and risks associated with the delivery of the A40 corridor programme which are being actively managed by the Programme team. Whilst a number of these can be considered as reflective of the scale and complexity of the programme being undertaken, land assembly is a matter of particular note.

## **Background**

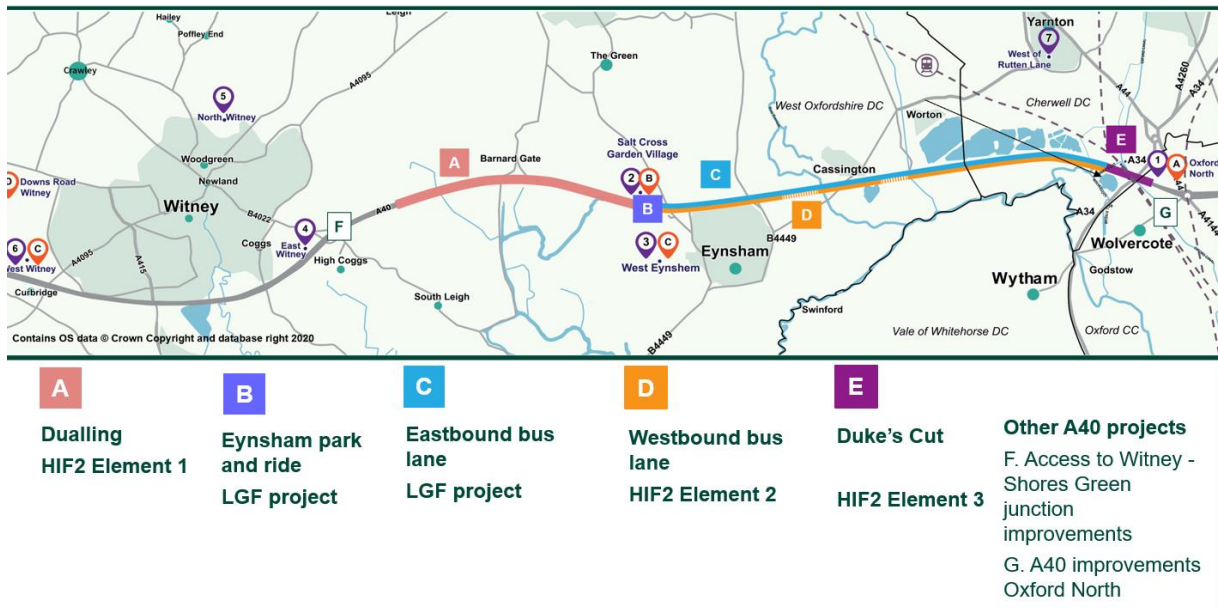
### Scheme Purposes

16. The purposes of the A40 HIF2 Smart Corridor transport scheme are to:
- increase transport capacity along the A40 in West Oxfordshire;
  - provide greater travel choice and encourage more use of bus, cycling and walking;
  - deliver faster and more reliable bus journey times;
  - improve safety and reduce environmental impacts such as air pollution and noise;
  - improve accessibility and connectivity to employment and public services;
  - support housing delivery in West Oxfordshire;
  - promote economic growth in Oxfordshire and creation of new jobs.

### Scheme Description

17. The A40 HIF2 Smart Corridor project is the second phase of the A40 corridor programme investment. The scheme includes three key highway enhancement elements:
- Element 1: A40 Dual carriageway extension - between Witney and Eynsham, approximately 3.2km in length
  - Element 2: A40 Integrated Bus Lanes, approximately 7km in length
  - Element 3: A40 Duke's Cut capacity and connectivity improvements across canal and railway bridges, approximately 0.6km in length
18. The A40 HIF2 Smart Corridor scheme as a single integrated package of measures has been designed to mitigate the increased transport demand generated by housing growth by increasing the highway capacity of the route between Witney and Eynsham, while providing a high-quality, congestion-free public transport alternative for travel between Eynsham and Oxford. Interchange would be made possible at Eynsham Park & Ride, part of the A40 Science Transit 2 Scheme.
19. Figure 1 sets out how the HIF2 project and the other elements of the A40 corridor Programme have been designed to form an integrated package of measures.

**Figure 1: A40 Corridor Programme Overview**



Strategic Context

20. Oxfordshire County Council’s Local Transport Plan 2015 – 2031 (‘LTP4’) identifies a transport strategy for the A40 corridor. The West Oxfordshire Local Plan 2031 (‘WOLP’) (adopted September 2018) seeks to provide for around 15,950 new homes. The WOLP was supported by an evidence base, including a Sustainability Assessment, amongst other things identifying strategic environmental issues potentially affected by developments. Section 7 of the WOLP outlines transport issues and plans and policy T2 Highway Improvement Schemes identifies A40 improvement plans (which are also referenced in other policies including WIT1, WIT2, WIT6, EW2 and EW10).
21. Policy EW1 of the WOLP requires Salt Cross Garden Village (SCGV) allocation to be taken forward on a comprehensive basis led by an Area Action Plan (AAP). SCGV is a strategic location for growth to include around 2,200 homes, a campus style science park and other supporting services and facilities including the park and ride site. The SCGV sets out a vision for the garden village supported by core objectives, policies and a delivery framework. The AAP is supported by a suite of documents including an Infrastructure Delivery Plan (IDP). The IPD also formed part of the evidence for the successful HIF grant and the resultant Proposed Development. The SCGV AAP is now substantially advanced, WODC formally submitted the AAP to the Planning Inspectorate for independent examination on 10th February 2021.

**Table 1 – A40 HIF2 Smart Corridor dependent sites**

Site	Site Name	Homes	Current Status
1	Salt Cross Garden Village	2,200	In Planning (Outline application Submitted)

2	West Eynsham	763	In Planning (Outline Application for 180 homes)
3	East Witney	450	In Planning (Outline Application submitted)
4	North Witney	1,400	Pre-Application Stage

22. Element 1 A40 Dualling extension

Delivery of this will extend the capacity increase provided by the existing A40 Dual Carriageway (Witney Bypass) further east from Witney to Eynsham. Witney is the largest town in West Oxfordshire and a key retail and services destination for neighbouring settlements. This element directly supports housing growth at Site 3 East Witney and Site 4 North Witney.

23. Widening the single carriageway to dual carriageway will significantly increase highway capacity for all modes of transport and provide access to the transport interchange hub at Eynsham Park & Ride site, where fast bus services to Oxford city centre, Oxford Hospitals and key employment sites can be accessed. This Element also provides more capacity for local trips between Witney and Eynsham, including a shared pedestrian and cycle lane, which will enable residents at the Eynsham sites (Sites 1 and 2) to easily access local employment, retail and services in Witney.

24. Element 2 A40 Integrated Bus Lanes and Element 3 A40 Dukes Cut

The improvements directly serve Site 1 Oxfordshire Salt Cross Garden Village and Site 4 West Eynsham. This part of Oxfordshire has some of the highest levels of “out-commuting” in the county, over 20,000 West Oxfordshire residents commute to destinations outside of the District for work, the highest proportion of which at over 7,500 people commute to Oxford City. This means there is a high level of dependency on the A40 corridor, and the HIF2 proposals, to access a growing job market in Oxford.

25. Should the A40 HIF2 Smart Corridor project not progress, the four Local Plan Housing sites at Witney and Eynsham, would not be supported by the essential infrastructure to mitigate the transport impact of growth. These homes contribute to the Oxfordshire Housing and Growth Deal commitment to support the delivery of 100,000 homes by 2031. Without the HIF2 project, this objective would be placed at risk, as WODC would have to consider the use of planning conditions to halt housing delivery until certainty around infrastructure funding could be secured.

Transport Context and Issues

26. The A40 forms the major east-west route across the south of the West Oxfordshire district. It forms the primary route between Oxford and Cheltenham as well as being part of the long-distance route between London and south-west Wales. The A40 carries a mix of local, regional and longer-distance traffic, some travelling to/from M40 and Carterton.

27. The A40 road corridor west of Oxford is a heavily constrained route. Oxfordshire's Local Transport Plan, Connecting Oxford states that *"Congestion on the A40 to the east of Witney causes very lengthy delays for journeys to and from Oxford at peak times. This impacts on the ability of local businesses to achieve growth and makes...a less desirable place for new businesses to locate. Bus services are vulnerable to delay because of congestion within Witney, through Eynsham and approaching Oxford on the A40"*.
28. On an average weekday a total of 32,000 vehicles travel along the A40 Witney to Eynsham section in both directions with around 2,000 vehicles using this in both directions during the morning and evening peak hours. East of the Cassington junction the average weekday traffic flows are lower with a total of 23,000 vehicles in both directions with around 1,800 in the morning peak and 1,600 in the evening peaks hours.
29. Poor network performance on the A40 corridor, translates into slow traffic flows and subsequently longer journey times, which is especially evident during morning and evening peak periods. In addition to these higher average journey times, there is evidence of significant variability, which highlights the existing journey time reliability issues on the corridor.
30. In terms of journey times between the Shores Green Junction at Witney and the Wolvercote Roundabout the surveyed journey times demonstrate that congestion during the peak hours almost doubles the journey times in both directions from 11 to 19 minutes.
31. Journey time uncertainty has affected peak periods for many years, but the extent of peak spreading and redistribution to less suitable routes has reached conditions that can be interpreted as 'severe' (as set out in National Planning Policy Framework).
32. The A40 is an important bus corridor. Bus routes S1, S2 and S7 connect Carterton, Witney and Eynsham with Oxford. Bus patronage has been growing steadily over recent years with 2019 showing a 45% increase on 2007/8 levels. Local bus travel pre-Covid accounted for around 20% of peak period passenger trips on the A40 corridor between Witney-Eynsham and around 12% east of Eynsham.
33. Further connectivity and growth in the bus passenger market is constrained by the long and unreliable journey times with services delayed in the same congestion as all other vehicles. The current service operator (Stagecoach) have indicated that they are unwilling increase services along the A40 to Oxford or to the John Radcliffe Hospital and Headington area during the peak periods because it is impractical to timetable bus services.
34. Without bus priority on the A40 corridor the public transport on the A40 suffers from slow journeys as well as from reliability issues and therefore limits the potential to shift demand to more sustainable alternatives.

35. Oxford has one of the highest rates of cycling in the UK, with over a quarter of all commuting trips under 3 miles made by bike and 16% of those between 3 and 5 miles, compared to 6% and 3% for England, respectively. However, cycle mode share is significantly lower on the A40 corridor, at around 5% in Witney and 7% in Eynsham and Cassington. This is primarily due to low quality cycling provision along the A40 corridor.
36. Based on surveys of active travel in recent years, cycle travel is highest between Cassington and Duke's cut, with 200-250 two-way daily trips; Pedestrian volumes were lower, with the greatest activity recorded near the bus stops in the Witney Road area
37. Current active modes infrastructure comprises of a shared pathway that runs alongside both sides of the A40 from Eynsham to the east, with only a northside path between Eynsham and Witney. Much of the existing provision is approximately 1m wide and lacks provision for Active Travel crossings at most intersections with local roads near urbanised areas, mainly at Eynsham, which creates important severance barriers, especially for pedestrians.
38. A failure to give road users choices of travel and better journey time reliability would lead to County Council objections to planning applications that increase traffic on the A40 corridor in the West Oxfordshire area, most noticeably those which are dependent on the HIF2 infrastructure.

#### The Need for the Scheme – Economic, Environmental and Social Benefits

39. The A40 corridor infrastructure proposals would provide several Economic and Social benefits.
40. Economic
  - Directly unlocking strategic housing development sites at East and North Witney and West Eynsham as well as the Salt Cross Garden Village development site, which includes an 80,000m<sup>2</sup> Science Park (4,500 jobs)
  - Addressing identified housing need, including affordable homes for West Oxfordshire and the County
  - Address transport challenges, in particular improving transport connectivity along the corridor and particularly to employment in Oxford and strategically (Ox-Cam Arc, London etc)
41. Initial feasibility work was carried out on the three HIF2 scheme elements to scope and cost the work in order to prepare the funding submission to Homes England prior to entering into the funding agreement
42. The Economic Appraisal results provided a Net Present Value of £362m and Benefit to cost ration (BCR) of 2.5:1 for housing and transport combined. Therefore, for every £1 invested there is a £2.50 return to the wider economy.



43. This initial economic assessment reinforces the case for the full scheme and in line with Department for Transport's Value for Money Framework the Preferred Option represents high value for money for the taxpayer.

44. Environmental

- A minimum of 10% biodiversity net gain is to be achieved as a direct result of the scheme. this net gain will be kept local to the scheme boundary.

45. Social

- Individual and collective health benefits from a mode shift away from car use and an increase in walking and cycling
- A positive impact on air quality from a reduction in vehicular emissions
- Safety improvements and a subsequent reduction in accidents and severance due to enhanced infrastructure for all road users.

The Need for the Scheme – Highway and Transport Network Benefits

46. The A40 HIF2 Smart Corridor infrastructure proposals would provide a number of Highway and Transport benefits:

Highway

- Increased capacity between Witney and the proposed Eynsham Park & Ride Site
- Management and control of traffic movements along the A40 at Eynsham and east to the Wolvercote Roundabout
- Improved journey time reliability

Transport Network

- The provision of Bus Lanes between the proposed Eynsham Park & Ride and Wolvercote Roundabout will provide improved bus journey times and reliability. This would reduce bus operating costs and improve resilience which would provide the opportunity for enhanced bus services in terms of bus frequencies routes and connectivity.
- Improved Walking and Cycling infrastructure both along and across the A40 which will help facilitate and encourage mode shift.
- The improved infrastructure would include a number of high quality at grade controlled and uncontrolled crossings across the A40 that will help facilitate safe crossing of the A40 and cater for the forecast increase in walking and cycling demand due to the proposed dependent developments.

47. The proposed infrastructure will enhance the operation of the existing network whilst providing those wider opportunities for users of the A40 corridors to travel by alternative modes. This in combination with the completion of the Local Transport and Connectivity Plan targeted to be adopted in late 2021, with Draft

Vision Consultation having been undertaken during February and March 2021, will strategically manage travel along the A40 corridor moving forward.

48. The full benefits of the proposed scheme are currently being re-quantified and will be provided as part of the full Planning Application and future reports to Cabinet.

#### Planning Policy Context

49. The Development Plan for the HIF2 planning application comprises:
- West Oxfordshire Local Plan 2031
  - Cherwell Local Plan 1996 (Saved Policies)
  - Oxfordshire Minerals and Waste Local Plan Part 1 Core Strategy
  - Made Neighbourhood Plans affecting the route
50. Key material planning policy considerations include the National Planning Policy Framework (NPPF), Planning Practice Guidance (PPG), Oxford Local Plan and Oxfordshire Local Transport Plan 4. Emerging planning policy documentation will also form material considerations with weight to be attributed depending on the stage of the Local Plan process the document has reached.

#### Form and Scope of Planning Application

51. OCC is preparing a single, full planning application accompanied by a single Environmental Impact Assessment (EIA). The three elements are interdependent on each other, and in EIA terms are considered to comprise a single Project. The planning and EIA strategy for the scheme was ratified by Graeme Keen QC on 6 January 2021 following his consideration of OCC's written instructions and a subsequent consultation to discuss the proposals and the approach in some detail.
52. During an informal briefing meeting held with OCC Planning in their capacity as the Local Planning Authority (LPA) on 17 February the Applicant team briefly discussed the possibility that some of the proposed Element 3 works may benefit from permitted development rights under Class A Part 9 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
53. OCC has since sought further advice from their planning and environmental advisors on the possibility of this approach. At the time of writing, it is considered that the maintenance aspects of the Element 3 proposals could potentially be pursued under Permitted Development rights and that there is no planning requirement for their explicit inclusion within the HIF2 planning application (albeit for completeness it is anticipated that these will be referenced). It is further considered that the improvement measures will require planning permission, largely as a result of the environmental implications and cumulative impacts associated with the wider Project. Consequently, these are very likely to be incorporated into the main HIF2 planning application.

54. OCC will explore the detail of this approach with the LPA in due course including the requirement for a Lawful Development Certificate in relation to the works of maintenance.

### Regulation 3

55. OCC acting as Applicant intends to submit a full planning application to OCC as the LPA. OCC is required to determine some of its own planning applications by virtue of Regulation 3 of the Town and Country Planning General Regulations 1992. Regulation 3 enables OCC to make planning applications to itself providing that the development is to be carried out by or on behalf of the Council and the interest in the development by the Council is significant.

### Planning - Current Position

56. Currently the HIF2 scheme is at pre-application stage. OCC as Applicant is working with the LPA to finalise pre-application arrangements including the approach for delivering collaborative working practices at pre-application stage with Officers from the local and district authorities.
57. A Scoping report, which sets out in detail the proposed approach to the requisite EIA was submitted to the LPA on 16 March 2021 (R3.0034/21).

## **Progress to Date**

58. The work undertaken to date to develop the project since the last report to Cabinet has included:
- The development of the original concept and options for the scheme through to a complete Feasibility design.
  - A detailed value engineering process to finalise the preferred design options to achieve the most cost-effective solution, minimising where practicable the impact of third party land take and alterations to existing access arrangements.
  - Informed by the above, the commencement of the preliminary design stage.
  - Development of a robust scheme budget, risk management process and delivery programme, as set out within this report.
  - Consultation with the public and stakeholders at various stages of the scheme development to date.
  - Development of a full planning application for the scheme to be submitted in September 2021.
  - The appointment of a number of technical specialists and contractors to deliver this and subsequent stages of the project.
59. In conjunction with all of the above, the land and property needed for the scheme to be delivered has also been initially assessed. This has identified the need for the use of statutory powers in the form of:
- Compulsory Purchase Order (CPO)
  - Side Roads Order (SRO)

with powers of compulsory purchase used only as a matter of last resort in parallel to private treaty negotiations in order to facilitate the timely delivery of the scheme where there would not be a reasonable prospect of delivery within the funding window in the absence of powers.

## Programme

60. Due to the need to continue to develop and deliver the scheme at pace to limit further delays and also with the related funding window set out in the criteria in the contracted HIF2 Grant Determination Agreement, a defined programme and meeting the tight critical paths is paramount.
61. The delivery programme has undergone a full review and with the input of a number of key delivery partners to ensure that it is as robust as possible. The programme is being continually updated as the project progresses and in line with Council internal governance requirements.
62. Key milestones through to successful scheme delivery are set out within Table 2.
63. The critical path to the delivery of the HIF2 project is to successfully acquire all of the necessary land and new rights required for the delivery of the scheme. At present, the programme reflects a worst-case position that the orders (or any number of them) will be contested and the Secretary of State for Transport will call a local Public Inquiry.
64. Acquiring authorities should acknowledge and understand that every effort should be made to acquire the necessary land interests and new rights by private agreement with the affected parties and that **compulsory acquisition is a matter of last resort**. The Council has appointed external property agents and CPO legal specialists to undertake this work. However, acquisitions by negotiated agreement of all of the land affected and new rights required may not be possible within the funding window for this scheme and are, therefore, a key risk to its delivery.
65. Whilst acquisition by agreement will be diligently pursued, from a timescale perspective, initiating the CPO process over the entire land holding that is required to implement the scheme offers certainty should parallel negotiations to acquire the land and new rights by agreement be unsuccessful. This is particularly important considering the funding window within which this scheme need to be delivered.

**Table 2 –Proposed Key Milestones HIF2**

<b>Activity</b>	<b>Target Date</b>
Public engagement	May 2021
Cabinet – in principle use of statutory powers	June 2021
Cabinet – preferred scheme options	July 2021
Planning application	September 2021
Detailed design commences	October 2021
Cabinet – resolution to CPO	October 2021

Planning determination	Early 2022
Detailed design complete	late 2022
Possession of land	mid 2023
Construction commences	mid 2023
ALL Construction Complete	late 2024
Project Close	Early 2025

66. COVID-19 programme effects moving forward have been included as far as reasonably practicable within the timescales quoted above. The potential ongoing effect is discussed further within the Risk Management section of this report.

### Corporate Policies and Priorities

67. The delivery of the HIF2 project will actively support the following key themes within Oxfordshire County Council's Corporate Plan 2020-24:

- **Providing services that enhance the quality of life and protect the local environment** – alongside other A40 projects such as Science Transit Phase 2 the HIF2 project will promote the modal shift away from private cars and into the more sustainable modes of travel of public transport, cycling and walking. This will be for both existing traffic as well as supporting future development in the area, enabling a culture change from the outset driven by the provision of quality infrastructure, rather than attempting to 'retrofit' afterwards.
- **Supporting a thriving local economy by improving transport links to create jobs and homes for the future** – the HIF2 project is integral part of the wider A40 investment programme which will directly provide enhanced highway capacity, improved journey times for all and connectivity and reliability of public transport provision in West Oxfordshire.
- **Taking action against Climate Change** – by reducing congestion and promoting modal shift in how people travel along the A40 there are clear benefits in terms of reducing carbon emissions, promoting 'zero carbon travel' and improving air quality in the area.

### Financial Implications

#### Project Costs

68. The following is a high-level breakdown of the current project costs, reviewed in detail at end of April 2021:
- Stage 2/3 Development and Design - £ 6.925m
  - Stage 4 Detailed Design – £ 5.745m
  - Stage 5 Construction - £ 57.150m
  - Stage 2-5 Client and miscellaneous costs – £ 6.173m

- Legal and property fees (inc. land) – £ 5.446m
- Statutory Undertakers diversions - £ 6.60m

69. All figures are inclusive of the appropriate inflation allowances.
70. The risks associated with scheme delivery are underwritten by a £18.717m quantified risk and contingency fund which are accounted for separately within the overall forecast budget.
71. Therefore, the total scheme cost to completion is **£106.756m**.

### Project Funding

72. The project is entirely funded by Housing Infrastructure Fund grant to a capped value of £106.756m, subject to entering into the revised Grant Determination Agreement (GDA) with Homes England as per the recommendations set out in this report.
73. The Council entered into the GDA on 28.08.2020 to secure these monies, subject to a series of linked conditions. The current value secured is £102.011m. Please see also section of report on risk.
74. As set out in the December 2020 Cabinet report, the funding is in place to cover the whole scheme costs associated with the interdependent Science Transit Phase 2 scheme, subject to the successful approval of the Full Business Case (FBC). The FBC having now been submitted for approval by the DfT.
75. Further to the same there is a need to uplift the cap on development costs in line with the revised GDA from £5m to £8.6m and update the Council's capital programme. This is fully funded from HIF grant.
76. However, with reference to the capped costs and funding availability within the Grant Determination Agreement with Homes England, any costs over and above the agreed funding envelope or that fall outside of the agreed timescales would need to be met by the Council. These additional costs would need to be met by reprioritising the capital programme or borrowing to fund the pressure. A letter of assurance has been signed by the section 151 officer for HIF2 confirming that Oxfordshire County Council has the ability to cover any cost increases in order to complete the project should the risk materialise.

Comments checked by:

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## **Legal Implications**

### Statutory Powers

77. Members should note that whilst the Council has compulsory purchase powers as an Acquiring Authority, under the Highways Act 1980 and the Acquisition of Land Act 1981, as referenced elsewhere in this report, these powers should be

used as a matter of last resort. Dialogue with affected landowners has commenced and will continue in parallel to acquire by negotiation as a first principle.

78. While an Authority can use compulsory purchase powers where it is justified and expedient to do so, in considering whether to confirm the CPO, the Secretary of State will need to be convinced that there is a compelling case in the public interest for compulsory acquisition. Members should therefore apply a similar test before authorising the in-principle decision to use these powers based on the balance of the information contained in this report. This is in the knowledge that a further report will be brought to Cabinet at a later date seeking authority to make the formal statutory Order itself.
79. The acquiring Authority is also expected to show that if compulsory acquisition is authorised the scheme is unlikely to be blocked by physical or legal impediments to deliverability. These include related infrastructure works, funding and the need for planning permission, the position of all of which are covered under various sections of this report.
80. Members should also note that once the CPO is made (following any future Cabinet authority required), those parties with an interest in the land and the public generally have a right to object to the CPO (and SRO) and, if so decided by the Secretary of State for Transport, have their objections heard at a local Public Inquiry. As Acquiring Authority, the Council must make the case for confirmation of the CPO to the Secretary of State but, if heard in a public Inquiry, the case will be made and tested in this forum. The CPO does not take effect until confirmed by the Secretary of State. Confirmation of the CPO affords the Acquiring Authority the power to compulsorily acquire land, but those powers have to be actively engaged, which has statutory minimum time periods for taking possession of land. Once the Order is confirmed, any party aggrieved by the decision has a further six weeks from the first date of public notification of the confirmation in the local press to challenge the decision in the High Court on a point of law, often referred to as statutory Judicial Review. This could result in the Order, or the decision to confirm it, being quashed in whole or in part. The same principles of statutory challenge apply in relation to the Side Roads Order.
81. The principal powers in the Highways Act 1980 are:
  - Section 14 and 125 (SROs)
  - Section 239(1), which provides that a highway authority may acquire land required for the construction of a highway which is to be maintainable at the public expense;
  - Section 239(3) which allows a highway authority to acquire land for the improvement of a highway being an improvement which the authority is authorised to make under the Act;
  - Section 240, which allows the acquisition of land in relation to an order under Section 14

- Section 246 authorises the acquisition of land for the purpose of mitigating the adverse effects of the construction or improvement of highways;
- Section 250 authorises the compulsory acquisition of new rights over land; and
- Section 260 authorises the clearance of the title to land already held by the Council and required for the scheme and which might otherwise interfere with the Council's activities in exercising its statutory powers to construct the works.

though it should be noted that a full assessment of appropriate Highways Act powers will be included in the Report to Cabinet for the making of the CPO and SRO in due course.

82. Some of the areas over which freehold title is to be acquired may not be required for the permanent works and may be offered back to the current owners at Open Market Value under the Crichel Down Rules, providing that certain criteria are met. There is no obligation on these parties to purchase the land back and so the Council should assume that all land will be retained, whether surplus or not, and budget accordingly.
83. The SRO will authorise the stopping-up, amendment, diversion, improvement and creation of new lengths of highway or reclassification of existing highways and the CPO will include land that is required to enable the works authorised by the SRO to be carried out. The SRO gives authority to the CPO and the CPO cannot, therefore, be made without the SRO having first been made (i.e., sealed and executed by the Council), though this will happen immediately consecutively.
84. In addition, the SRO may make provision for the stopping-up and (where appropriate) re-provision of private means of access to premises and agricultural land. The CPO makes provision for the acquisition of land and new rights to enable new, replacement private means of access pursuant to the CPO, to be provided as part of the scheme.
85. It should be noted that the confirmation of compulsory purchase powers does not require that those powers be used nor does it acquire the land interests; it only provides the ability to use them. The Acquiring Authority has a duty to continue to try to acquire all necessary interests by private treaty agreement, where possible, with powers of compulsory purchase being used only as a matter of last resort. There is a statutory process pertaining to the implementation of powers, which will be reported to Cabinet when authority to make the CPO is sought, targeted for October 2021.
86. There may also be a requirement for both permanent and temporary traffic regulation orders (TROs) to enable the scheme, however, Cabinet approval is not required to implement these.



### Requests for Information

87. In order to pursue a CPO, Acquiring Authorities must undertake diligent enquiry to ascertain the land interests that exist in relation to each parcel of land required to facilitate the delivery of the scheme. The Council has engaged land referencing specialists to undertake this work, which feeds into the Order Map and Order Schedule.
88. Albeit that much of the information regarding interests in land can be discovered from investigation of the information held at HM Land Registry, one of the key components of land referencing is the ability to request information directly from the parties known from the desktop referencing process. These requests take the form of statutory requisitions for information pursuant to Section 16 of the Local Government (Miscellaneous Provisions) Act 1976 (as amended).
89. Such requisitions provide for a minimum 14-day period from receipt for a response, though authorities often provide a longer period. Non-response to a statutory requisition for information is a criminal offence and it is for this reason that the approval of Cabinet to the service of these notices is sought, over and above the delegated powers to officers in the Council's Standing Order. It should be noted that any action taken as a result of an offence being committed is entirely at the discretion of the Council.

### Human Rights

90. The Human Rights Act 1998 incorporated into domestic law the European Convention on Human Rights ("the Convention"). The Convention includes provisions in the form of Articles, the aim of which is to protect the rights of the individual.
91. The following articles of the Convention are relevant to the determination as to whether a compulsory purchase order should be confirmed:
- Article 1 of the First Protocol protects the right of everyone to peaceful enjoyment of possessions. No one can be deprived of their possessions except in the public interest and subject to the relevant national and international laws. Any interference with possessions must be proportionate and, in determining whether a particular measure is proportionate, a fair balance must be struck between the public benefit sought and the interference with the rights in question;
  - Article 6 entitles those affected by the powers sought in any CPO to a fair and public hearing by an independent and impartial tribunal;
  - Article 8 protects the right of the individual to respect for his private and family life, his home and his correspondence. A public authority cannot interfere with these interests unless such interference is in accordance with the law and is necessary in the interests of, inter alia, national security, public safety or the economic wellbeing of the country.
92. Any CPO has the potential to infringe the human rights of persons who own property in the Order Land. Such infringement is authorised by law provided:

- the statutory procedures for obtaining the Order are followed and there is a compelling case in the public interest for any CPO; and
  - any intervention with the Convention right is proportionate to the legitimate aim served.
93. A full consideration of human rights implications of the Scheme will be considered when reporting to Cabinet in October 2021 for authority to make the CPO.

Comments checked by:

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### **Staff Implications**

94. The resource requirements to successfully deliver HIF2 will come from existing project and technical management functions, primarily within the Growth and Economy Directorate. This will be supported by other disciplines from across the Council organisation as the need arises.
95. Specialist legal advisors are already engaged to provide support to the CPO and other such statutory processes to limit the potential for future challenge to an absolute minimum.
96. The forecast Council staffing costs of project and technical management to completion are contained within the total budget quoted within this report.

### **Equality & Inclusion Implications**

97. The equalities implications of the HIF2 scheme will be assessed robustly through the design development stages of the scheme. These equalities implications will be considered in line with the Equality Act 2010 and through the completion of an Equality Impact Assessment (EqIA) as part of the development of the HIF2 and wider A40 programme.
98. The Public Sector Equality Duty (PSED), to which the County Council is also subject, places additional obligations on public sector bodies to eliminate discrimination, advance equality of opportunity and foster good relations. Recognising and complying with these higher standards is required to discharge the PSED. In particular, steps must be taken to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share that characteristic.
99. Work towards this has already taken the form of considering the safety of all pedestrians, cyclists, and horse-riders through a Walking, Cycling and Horse-Riding Assessment & Review which will form part of the information presented at planning. This continual review and development process will ensure that the protected characteristics, particularly those of age and disability, are considered appropriately in the design of the schemes through the provision of suitable crossing facilities and segregated routes of a high standard along all of the schemes. Further to this, by facilitating new bus services and better access to

urban and rural areas for non-motorised users, the needs of all people are being addressed. Reviewing the EqlA and the County Council's PSED will be a continuous process throughout the development of the scheme.

### **Sustainability Implications**

100. The HIF2 proposals alongside the complimentary ST2 project is designed to promote sustainable modes of travel for access into Oxford by commuting traffic by modal shift away from the private vehicle and on to public transport or by walking and cycling. In reducing traffic congestion levels this has positive impacts on air quality and carbon emissions.
101. Similar to the above, the successful delivery of the project, alongside other planned transport investment on the A40 corridor, will form a core part of the promotion and early enabling the use of more sustainable forms of travel for the new developments planned for the West Oxfordshire area. This will be teamed with promotional activities to achieve the cultural shift required.
102. The project, again alongside the wider A40 proposals, has been developed to be as sustainable as possible in terms of its impact on the environment by using the likes of sustainable urban drainage systems as a core part of its design development to date.
103. The scheme design has also been developed to offset any bio-diversity net loss and provision of improved environment and habitat for wildlife, providing a 10% net gain in biodiversity as a direct result of its implementation.
104. During the next stages of scheme delivery there will be specific sustainability targets imposed on the design and build contractor with the likes of re-use of site won materials as an example of how additional temporary environmental impacts during construction will be reduced.

### **Risk Management**

105. The key risk to delivery of the A40 HIF2 Smart Corridor was the original funding window deadline of March 2024 and the impact on Council capital finances should this be exceeded. As per previous sections of this report recent work demonstrated that to conclude a Highways CPO process the more realistic timescale to then construct the scheme would be late 2024. This key risk has now been mitigated via the revised funding contract with Homes England.
106. It should however be noted that the delivery programme remains significantly challenging with a number of workstreams required to run in parallel to meet the revised timeline.
107. Only minimal time risk allowance is included and therefore it is important that the project continues to be delivered in line with those key milestones contained within Table 2.

108. Further information around risks and their management can be found at Annex A, including a register of key strategic risks to the project.
109. Emerging risks will be escalated through the capital governance process to ensure that issues and risks arising and impact on the Council are considered and managed.
110. COVID-19 currently poses an unquantifiable risk to the project's future delivery programme, as well as the associated knock on impact to the HIF2 funding agreement. COVID-19 impacts will be closely monitored and implications on programme reported.

## **Consultations**

111. There is a detailed communications and engagement plan in place for the project. The purpose of this is to ensure consistency of approach across the wider A40 programme, ensuring that this is seen as a joined up complementary investment programme.
112. The 'communication and engagement' plan has also been informed by a series of public consultations over the course of the scheme development notably but not restricted to the Connecting Oxfordshire – A40 Investment Consultation, November 2018.
113. Further detail on consultations and stakeholder engagement can be found at Annex B.
114. There is a clear understanding of the importance of continuing to develop this communications and engagement plan, strengthening relationships with all stakeholders in the process.

## **BILL COTTON**

Corporate Director for Environment and Place

Annexes:

Annex A – Risk Management and Strategic Risk Register

Annex B – Consultation and Stakeholder Engagement

Background papers: Cabinet report – July 2020 – FP 2020/059: West Oxfordshire A40 Smart Corridor – Housing Infrastructure Fund (HIF2)

Cabinet report – December 2020 – FP 2020/141: LGF – Science Transit 2 – Funding and Full Business Case Submission

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## Annex A

# Risk Management & Strategic Risk Register

1. The technical complexity of the project has necessitated a comprehensive quantified risk assessment (QRA) to be maintained throughout the development of the project up to this point. A QRA is a fully developed list of project risks against which costs and probability of realisation of risk is applied to each to give a total financial value. This has looked at key areas of risk, notably health and safety, cost, programme, design, environmental and reputational. This risk register has been regularly reviewed and updated throughout the previous phases of scheme development.
2. In addition to the QRA a general contingency allowance has been made as part of the scheme cost build up which is reflective of the current status of development.
3. Table A1 outlines the key strategic risks to scheme delivery;

**Table A1 – A40 HIF2 Smart Corridor - Strategic Risks Summary**

<b>Risk</b>	<b>Mitigation</b>
Delivery programme timescales remain challenging – if exceeded Council pays all subsequent capital investment costs	Recent approval by Homes England to extend the funding window and grant further monies has formed first part of the mitigation to this risk.  Continued delivery by the Council to the key milestones as set out in Table 2 is the ongoing mitigation to this risk.
Inability to acquire all necessary property rights to deliver the scheme within the available funding window	Secure use of Highways CPO powers as a matter of last resort and running in parallel with private treaty negotiations
Need for Side Roads Orders to facilitate scheme delivery	Secure use of Side Roads Order powers from Cabinet
Contested statutory process leading to local Public Inquiry (planning / CPO / SRO)	Ensure adequate time and cost allowances are included within the scheme programme and budget to allow for a local Public Inquiry
HIF2: statutory processes (Highways CPO / Planning) running in parallel with HIF1 and other major schemes promoted by OCC.	Careful programming between the Programmes to avoid clashes where possible. Early engagement with decision making authorities to highlight resource risk.
Statutory Blight	Valid claims are received from affected properties requiring OCC to acquire. Paper to be brought to Cabinet in July to set out position and seek necessary delegated approvals to deal with any such claims.
Spend beyond funding window on the likes of Part 1 claims and mandatory post scheme monitoring.	Dialogue ongoing with Homes England to agree mechanism to draw down funding in advance of spend, which

	could be several years post scheme opening.
Client and supply chain resources to ensure successful delivery.	OCC resourcing forecast in place, secure client delivery team for duration of project where practicable. Robust procurement strategy in place and being delivered to.
High value statutory undertaker diversions required to facilitate works – long lead times and high values	Early identification and engagement with statutory undertakers to agree extents and costs of diversions. Potential to include as early enabling works package in advance of main construction.

4. There remains a risk of interdependency between this project and the ST2 investment, which is being developed to be complementary, as will be the benefits delivered. These risks are set out in detail in the July and December 2020 reports to Cabinet, as set out within the background papers to this report.
5. The report to Cabinet in July 2020 set out the potential to combine the ST2 project with one or more elements of the HIF2 proposals to generate cost and time efficiencies in the wider programme. There remains a small risk that this cannot be achieved, however, following further recent work the project team has developed a delivery programme illustrating how this will be facilitated. This will be explained in more detail in subsequent Cabinet reports.

## Annex B

# Consultation and Stakeholder Engagement



1. The projects webpage has recently been updated to a new format to make this more user friendly and in preparation for more detailed updates to be provided to the public during the subsequent stages of delivery.
2. This has more recently been supported by a number of engagements via the following forums;
  - Member, District and Parish Council briefings, March through May 2021
  - Landowner engagement has been ongoing since early 2020 seeking acquisitions by negotiation. Many of these are well progressed. Furthermore, intensive engagement with affected landowners has been undertaken during the months March – June 2021 as the scheme preferred options became known. This will continue throughout all subsequent stages of delivery.
  - Key user group meetings to explain scheme design and gain buy in to proposals.
  - Proactive engagement with statutory bodies such as the Environment Agency and Natural England to ensure that any scheme impacts are carefully and comprehensively mitigated.
  - Engagement with developers of adjacent sites to ensure works are co-ordinated from both technical and practical perspectives.
3. On 10 May a public engagement event was launched informed by the scheme preferred options. This closed on 7 June and the results are currently being collated to be brought back to Cabinet in July 2021 as part of a report to seek formal endorsement of the preferred scheme options.
4. A Statement of Community Involvement will also be produced to support the forthcoming planning application. This will outline all of the pre-application engagement carried out, the feedback received and how this has influenced the project.
5. There is a clear understanding of the importance of continuing to develop this communications and engagement plan, strengthening relationships with all stakeholders in the process.