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Regeneration Projects

## **Our City, Our River (OCOR): Update on Derby Riverside**

### **Purpose**

- 1.1 To provide Cabinet with an update to the work programme approved by Cabinet at their meeting in February 2020 and to secure approval for the next phase of OCOR's work programme, focussing on the Derby Riverside section of Package 2.

### **Recommendation(s)**

- 2.1 To note the successful delivery of OCOR works to date as outlined in Appendix 1 and the financial position of OCOR as detailed in paragraph 7.3.
- 2.2 To approve the land assembly strategy outlined in paragraphs 4.22 to 4.24, required to deliver the Derby Riverside flood mitigation measures ("Derby Riverside"), including the land and interests identified on the Plan included as Appendix 2 to this report, which also will provide the basis for use of CPO powers should such be necessary.
- 2.3 Subject to approval through the Council's Project Gateway processes, to delegate authority to the Strategic Director of Communities and Place in consultation with the Strategic Director of Corporate Resources and the Cabinet Member for Regeneration, Decarbonisation, Strategic Planning and Transport to take all actions necessary within the grant funding available to deliver the proposed work programme as outlined in paragraphs 4.26 to 4.32. To note the risk of potential for abortive spend should the Derby Riverside stage of Package 2 not be delivered.
- 2.4 To delegate authority to the S151 Officer in consultation with the Strategic Director of Communities and Place and the Cabinet Member for Digital, Finance and Culture, to accept the allocation of a further £1m of funding from the Environment Agency (EA) to support the completion of OCOR Derby Riverside, subject to them being satisfied on the conditions of the grant.

### **Reasons**

- 3.1 To provide information to Cabinet about the successful delivery of the OCOR programme to date, including progress on delivering the work programme approved by Cabinet in February 2020.
- 3.2 To enable the proposed delivery programme for the successful completion of the Derby Riverside stage of Package 2 to proceed, in order to meet our commitments to

our funding partners. The next stage of the work programme will enable greater cost certainty on the Derby Riverside flood mitigation measures.

- 3.3 Following further design works for Derby Riverside, the Plan considered by Cabinet in February 2020 detailing the land required for delivery of Derby Riverside needs to be updated. This revised Plan would form the basis of the Council's use of Compulsory Purchase powers if required to guarantee delivery.

## **Supporting information**

### **Background**

- 4.1 Derby's flood mitigation programme – Our City Our River – is being delivered through a partnership with the Environment Agency and is a national exemplar of how cities can sustainably adapt to the impacts of climate change. As the programme moves into the heart of the city centre, the opportunities afforded by OCOR to unlock regeneration benefits, in addition to the fundamental flood resilience benefits, feature strongly in our City Ambition. Building on this strong partnership foundation, the EA are working with the city to explore further opportunities for nature-led regeneration and are a proactive member of the City Centre Programme Board.
- 4.2 The OCOR Masterplan, approved in 2012, and subsequent full business case developed with the Environment Agency in 2013 are the foundation for the programme scope and objectives. The OCOR ambitions are summarised in Appendix 1A, which also updates Cabinet on the successful delivery of OCOR measures to date. The significant progress towards providing enhance flood resilience for 1,500 homes and 700 businesses in Derby has proved beneficial on occasions when levels on the Derwent have risen, most recently in November 2019.

### **Works on site**

- 4.3 Cabinet is asked to note progress on construction of a new pumping station located on Mill Fleam at Bass's Recreation Ground. The pumping station provides enhanced protection against the real risk of Markeaton Brook and surface water backing up and flooding the city in the event of high river levels on the Derwent during a flood event. This is the final section of flood risk mitigation works required to enable the proposed OCOR measures at Derby Riverside to proceed. The Mill Fleam construction site has temporarily occupied a significant area of Bass's Recreation ground. The final footprint of the new pumping station and associated power and operational structures will cover a much smaller area, with the main station structure sited almost entirely within the Mill Fleam channel. The pump station is expected to be completed by the end of March 2023 and the reinstatement and landscaping to the site compound area will then commence.

### **Progress on Derby Riverside**

- 4.4 The Derby Riverside works will complete Package 2 of OCOR and provide huge resilience benefits to a number of significant employment sites in the city. This phase of works also offers an exciting opportunity to unlock regeneration in this part

of the city centre, as recognised in the City Centre Ambition. In February 2020, Cabinet approved a work programme of deliverables for Derby Riverside, to be completed by 2023:

- Undertake detailed site investigations
- Appoint a planning consultant to progress the Scheme through to planning consent
- Complete an update of the flood mitigation, environmental enhancement designs and all reports required for detailed planning application
- Update the OCOR flood modelling tool to incorporate the 'as built' flood mitigation measures already delivered and confirm the proposed alignment.
- Submit a planning application
- Undertake CPO land referencing exercise, valuations and prepare the Statement of Reasons.

The following paragraphs update Cabinet on progress with these tasks

### **Site investigations**

- 4.5 Specialist and technical surveys have been undertaken. These provided up to date and detailed information for inclusion in the brief for commissioning a planning consultant and subsequent surveys have advised the proposals in the OCOR Derby Riverside planning application.

### **Appointment of Planning Consultant**

- 4.6 Following a procurement exercise, Tetra Tech Ltd. was appointed in 2022 as planning consultant, commissioned to complete the detailed planning application work package for Derby Riverside. Tetra Tech have progressed with the development of the suite of required documents and drawings in line with the delivery programme and are responsible for submitting these as part of a full planning application. We anticipate that by the Cabinet meeting on 15 March the application will have been submitted.

### **Complete designs and reports required for detailed planning application**

- 4.7 The OCOR Derby Riverside planning submission seeks to deliver new flood mitigation and alleviation measures in the form of hard defences, enhanced landscaping and new riverside green space along the east bank of the river Derwent between Causey Bridge to Derwent Bridge where the railway crosses the river. The proposed scheme requires the demolition of the office buildings located on Stuart Street adjacent to the river. The proposed removal of these buildings remains as expressed in the 2020 Cabinet report. Affected parties have been informed of the proposals and reasonable support will be provided to directly affected business occupiers around the potential to relocate within the City to mitigate the impact of the scheme.
- 4.8 Cabinet is to note a significant change to previous designs in that the residential development at Exeter House is now to be retained and will benefit from a new flood alleviation wall.
- 4.9 Noticeable landscape changes include the demolition of buildings and the unavoidable loss of some established trees, required to create a new riverside green space. This new biodiverse environment, with purposeful and considerate planting including rainwater gardens will replace the demolished office buildings.

This specially designed city centre green space is aimed to maximise the opportunity provided by the space required for the essential provision of a flood conveyance corridor. The OCOR programme includes a commitment to the mitigation of tree loss and the enhancement and protection of Derby's biodiversity and riverside experience. A comprehensive programme of environmental works has already been delivered with further plans to replant trees across Derby are being progressed in partnership with a range of local interest groups, schools charity and community organisations.

- 4.10 The latest general arrangement drawings are appended to the report at Appendix 3
- 4.11 The Derby Riverside works consider the Derby & Sandiacre Canal Restoration Trust Riverboat operating from Phoenix Green and will not have any detrimental impact upon this, except during the construction period. The OCOR programme remains committed to mitigating the impact of the construction work phase on affected parties where possible.

#### **Development of a concept plan to support the planning application**

- 4.12 Progressing Derby Riverside is a priority for the OCOR programme but is also intrinsic to the emerging Derby City Centre Vision. The City Centre Ambition document published for consultation in Summer 2022, already recognises the regeneration potential unlocked by OCOR flood resilience measures for new development in this part of the city centre. This is a significant step forward towards realisation of the regeneration opportunities identified in the 2012 OCOR Masterplan.
- 4.13 A high-level 'concept plan' for the Derby Riverside area has been prepared in support of the planning application. The plan is designed to outline how the flood alleviation & mitigation works at Derby Riverside will sit within the context of the Riverside area and the wider city centre. The 'concept plan' provides form and function to the Council's ambition for a high quality residential-led development at Derby Riverside. Working with our partners, the Environment Agency and Homes England, the regeneration of the Riverside area will assist in addressing Derby's housing need, creating a desirable development and a new sustainable urban community, that will bring growth and vitality to the city centre. A copy of the indicative layout is included within Appendix 4.
- 4.14 The regeneration of the wider Derby Riverside area forms part of the longer-term strategy of the Council, working with partners, to bring further housing development into the city centre. A report will be brought to a future Cabinet meeting providing further detail of how this ambition is to be realised, including consideration of delivery mechanisms and the resources required to enable this. The delivery of housing-led development and new jobs remains a priority for the OCOR programme given the significant funding secured from D2N2 LEP to support the programme.

#### **Submission of planning application**

- 4.15 The planning application is scheduled for submission in March 2023 and authorisation to submit was delegated by Cabinet in February 2020 to the Strategic Director of Communities and Place. The expected determination period is six months with a decision anticipated by end September 2023.

### **Update the OCOR flood modelling tool**

- 4.16 The OCOR programme benefits have been defined using a bespoke flood modelling data tool, which is aligned to the wider flood risk management modelling tool used by the EA for Lower Derwent and wider Humber Basin flood risk management strategy.
- 4.17 Once the OCOR flood defences were completed for the package 1 area, combined with the works completed under the Munio project, an update of the OCOR flood modelling tool was undertaken to include the new defence information. The record high water levels reached on the Derwent on 8<sup>th</sup> November 2019 triggered a review of the long bridge weir by specialists at the EA, as the recorded flood water levels of November 2019 flagged some anomalies in the flood modelling tool data.
- 4.18 The outcome of the long bridge weir review and the update to the OCOR flood model have resulted in the forecast flood water levels changing, compared with the levels forecast at the time OCOR business case was completed.
- 4.19 The effect on the data is a positive one for Derby. The Package 1 flood defences were designed to provide a standard of protection for a 1:100-year event with 5% allowance for impacts of climate change. The construction designs allow for increasing the height of the defences in future if required.
- 4.20 Since OCOR commenced delivery in 2015, the recommended percentage allowance for the impact of climate change has increased from 5% to 29%. The recently updated flood modelling tool for OCOR indicates that the works completed to date now provide this higher level of flood resilience. As we are mid-delivery of Package 2, our planning proposals for Derby Riverside retain a wall height consistent with all OCOR's works to date and will provide the current 29% climate change allowance.
- 4.21 The revised modelling data will be used to investigate the required scope of works in the Package 3 area to see if the scope and cost of remaining works can be redefined

### **Land Assembly Strategy**

- 4.22 The scheme requires land which falls under several different ownerships and a land assembly strategy has been developed and is outlined in the plan contained within Appendix 2. Where possible, the Council will seek to deliver the flood defence upon land within its own control or make use of the powers of entry delegated to it under the Water Resources Act 1991 by the Environment Agency. Where this is not possible, the Council is seeking to negotiate and purchase the land and property interests required.
- 4.23 The land required comprises the three office buildings on Stuart Street (multi-occupied Peat House, Epworth House (Methodist Housing Association HQ) and Derwent Court (Probation Office) as well as the former NatWest bank on Derwent Street. These properties must be acquired by the Council, as legal advice is that the Water Resources Act powers do not extend to the acquisition of whole properties for them to be used to accommodate flood water. The updated land plan removes the

residential properties at Exeter House and the offices at Phoenix Street from the scope of the land to be acquired.

- 4.24 Negotiations have commenced with those parties whose land and property interests are directly affected. The Council hopes to be able to acquire these interests by agreement. Where appropriate, support will be provided to business occupiers to assist with their search for new premises to help relocate and retain jobs in the city. Whilst it is the Council's strong preference to reach agreement with interested parties to acquire their properties, the Council needs to be prepared to make use of its powers of Compulsory Purchase to secure these parcels of land.

**Undertake CPO land referencing, valuations and prepare the Statement of Reasons**

- 4.25 Land referencing has commenced, and contact has been made with affected land and property owners and occupiers and a formal request for information will be made of affected parties. Should negotiations become protracted or unsuccessful the need for a potential Compulsory Purchase Order (CPO) process will arise. In anticipation of a possible CPO, Council officers have started preparation, including the making of a robust argument for the use of compulsory powers (the Statement of Reasons) and external legal advisors will be appointed to help support the development of the case. A future report will be brought to Cabinet summarising the Statement of Reasons to seek authority to secure the making, confirmation and implementation of the CPO if required.

**Future work programme March 2023 onwards.**

- 4.26 Since February 2020, Cabinet have approved the acceptance of a further £28m of grant funding from the Environment Agency to support the completion of Derby Riverside by 2026. This additional funding mitigates the risk of abortive spend on developing designs, securing planning consent and procuring a contractor, the costs of which would have to be funded from revenue budgets if the ultimate capital asset could not be realised due to insufficient funding.
- 4.27 Progress has been made on all the tasks previously endorsed by Cabinet in February 2020, and the following steps are now proposed to ensure the delivery of Derby Riverside by 2026, in line with the Environment Agency's funding conditions:
- Land Assembly
  - Continue design
  - Early Supplier Engagement
  - Procurement of technical and specialist advice
  - Procurement of a contractor

The work programme will enable a greater understanding of construction methodology, materials and ultimately more robust cost forecasts.

- 4.28 The intended procurement approach to progress the works from planning approval through to completion of construction is as follows:
- Engage design consultant via appropriate framework to complete detailed design of the works and fulfil the Principal Designer Role through construction.

- Engage technical and specialist advisory support to assist procurement, project management, contract management and financial management activities
- Procure Early Supplier Engagement to develop contract scope and pricing strategy.
- To enter into an NEC contract to undertake demolition of identified properties when appropriate and deliver the works when necessary consents and permits are secured.

### **Early Supplier Engagement (ESE)**

- 4.29 Having reviewed procurement options, the Environment Agency's Collaborative Delivery Framework (CDF) is considered the best route to market for procuring a suitably qualified and experienced contractor using the most expedient process. The CDF framework requires the Client (DCC) to determine a reasonable cost for the works and offer this to the Framework Contractor. In order to establish this offer price, the Client engages with the contractor using Early Supplier Engagement (ESE) to derive the agreed scope and costing of non-standard construction items. Following this the Client uses their own cost data for standard items to arrive at the offer price to the Contractor. If the Contractor accepts the price an ECC engineering contract is entered into to construct the works.
- 4.30 The ESE will allow for much greater cost certainty for the construction works for Derby Riverside and allow for OCOR to refine the funding resources required to support this stage of delivery before returning to Cabinet for approval to move to the next PMO gateway.
- 4.31 Given the current economic context of high inflation and availability of materials, coupled with a recent review of previous cost forecasts, there is a risk that the costs for completion of the Derby Riverside works may exceed the funding currently available. The work programme steps described will include input from experts in the construction sector to further refine the design, deliverability and cost of Derby Riverside flood alleviation measures. The delegated approvals sought through this report will be conditional on the assurances provided through the Council's Project Gateway process. This will ensure that a construction contract is only entered into on the basis of sufficient funding availability and a robust risk management plan.
- 4.32 The following table summarises the key steps for the progression of the OCOR programme with emphasis on Derby Riverside.

<b>Task</b>	<b>Date</b>	<b>Purpose</b>
Land Assembly Progression & CPO	Feb 23 onwards	To provide certainty of land control for delivery
Cabinet Approval to continue work programme	Mar 23	Approval of Land Assembly package authority to proceed with delivery of Derby Riverside.
Submit Planning Application	Mar 23	To provide certainty of scope and design details

Procure design consultant, technical support, specialist support and Contractor advice	Mar 23	To provide greater certainty of construction methods and risks for delivery phase.
Planning Application Approval	Sept 23	Necessary consent to enable construction phase
Flood Model update impact report	Sept 23	Inform scope of remaining works (primarily package 3) to ensure level of flood resilience is consistent.
Review of Financial Forecast for Derby Riverside	Oct 23	Greater understanding of refined forecast costs against funding available – inc details of funding package
PMO Gateway assurance and Delegated approval	Oct 23	Report financial status and seek approval to appoint contractor and prepare for commencement of construction phase
<b>Construction Timetable</b>		
Demolition Stage	Spring 24	Site preparation and compound establishment
Main works for flood defences commence	Autumn 24	Works to deliver flood defence /alleviation measures as a priority
Completion of flood defences	Spring 26	To meet deadline required by funders
Landscaping and reinstatement	Summer 27	To provide green space

### **Additional £1m funding from Environment Agency**

- 4.33 Our partnership with the Environment Agency for the delivery of the OCOR programme includes their assistance in identifying and securing funding otherwise not accessible by the Council. Recently, the EA have been successful in identifying an additional £1m of funding which can be used to support the delivery of the OCOR programme. The exact terms and conditions of this funding are still being determined, therefore delegated authority for acceptance of this funding is requested, subject to the requirements and conditions of the funding being acceptable to the Council.

### **Public/stakeholder engagement**

- 5.1 The Council has continued to hold informal face to face drop- in sessions and , briefings with stakeholders regarding the emerging timetable for delivery of Derby Riverside and the development of the concept plan for the wider regeneration ambitions. This has included discussions with Derby Homes with particular focus on the impact of OCOR proposals on Exeter House



- 5.2 The Council has met with and written to affected parties within the proposed CPO area. Once the planning application is submitted, further discussions will be had with the affected landowners and businesses to mitigate the impact of the scheme. The Council is committed to continuous engagement with all affected businesses to provide relevant information and reasonable relocation support, as well as using all reasonable endeavours to acquire land by mutual agreement.
- 5.3 A communications plan is being updated with the support of the DCC Communications and Marketing team

## Other options

- 6.1 The 2015 Hybrid planning application comprised proposals for the creation of a flood conveyance corridor to the rear of the three office buildings along Stuart St., the proposal also included the demolition of Exeter House. The 2015 proposals have been revisited and many alternative options to achieve flood mitigation measures and enhance regeneration opportunities for this key central location have been explored. Consideration of the options have included the extensive use of the flood modelling tool operation and maintenance, speed of delivery, buildability, longer term vision, regeneration ambitions for Derby. The comparison between the preferred option and the 2015 hybrid were set out in the 2020 Cabinet Report.

## Financial and value for money issues

- 7.1 Since the Cabinet approval in February 2020, work has progressed to bring forward the Riverside phase of the OCOR programme within the funding envelope approved in that report. The detail of this work is included in paragraphs 4.4 to 4.20 of this report.
- 7.2 Further external funding has since been secured as reported to Cabinet in February 2021 and again in February 2022, and this report seeks approval to now progress, at pace, with the Derby Riverside flood alleviation measures with the objective of completing by 2026. Current estimates suggest that the Riverside works could be contained within the remaining OCOR funds detailed in the table below through affordable design and careful procurement. However, the very nature and high value of the Riverside works means that costs won't be firm until the land purchases have taken place and the price from the construction contractor is known. This should be known by Spring 2024. The OCOR programme employs a specialist cost consultant who will continue to keep the forecast and contingency under constant review and if the costs cannot be contained, a report will be brought back to Cabinet following planning approval.

### 7.3 Current Financial position of the OCOR programme

	£m
Total Funding secured (Includes £1m detailed in para 4.32)	82.5
Total Expenditure and Current Commitments	41.5
Remaining Funding available	41

- 7.4 In approving the progression of Derby Riverside works, Cabinet should note and accept 2 key financial risks
- **The effect of inflation and rising costs** – Continuing high inflation rates will impact on our ability to contain the costs of the Derby Riverside phase within the current funding levels. The costs will be kept under constant review and incorporated into the programme forecast.
  - **The risk of abortive costs** – if, at any point, the Council is unable to complete the full OCOR works along Derby Riverside, some of those costs may have to be treated as abortive costs, for which the Council will need to identify revenue funding. This risk will be monitored and will fluctuate as this stage of OCOR progresses.

## Legal implications

- 8.1 A Collaboration Agreement between the Council and the Environment Agency outlines the delivery objectives and ambitions of the OCOR programme, plus the respective roles of the two key partners. This agreement empowers the Council to lead the delivery of the OCOR programme and the work programme described in this report is consistent with this Agreement.
- 8.2 Legal support will be required in order to progress land acquisitions and will be procured through the EM Lawshare framework in consultation with the Council's legal service.
- 8.3 External legal advice is required to support the development of a case for a Compulsory Purchase Order. This external advice would then continue through any ultimate CPO process and both services will be procured through the EM Lawshare framework in consultation with the Council's legal service.
- 8.4 Procurement of Early Supplier Engagement, professional and technical services and a contractor for delivery will be undertaken in line with the Council's Contract Procedure rules. The procurement strategy includes use of open tender, framework options, and where justified, a closed competition tender. A VEAT (Voluntary Ex-Ante Transparency Notice) would be published if necessary for any closed competition tender.

## Climate implications

- 10.1 OCOR is the climate change adaption programme for Derby for the potential impacts climate change will have upon the Derwent running through the heart of the city.
- 10.2 The Council's Climate Change Impact Assessment Tool demonstrates a number of positive benefits of this project in terms of influence, business and adaptation.



## Socio-Economic implications

- 11.1 The Socio- Economic Implications of the Entire OCOR scheme were considered in the 2014 Business Case considered by the EA for the original allocation of funding and are summarised in the Table below:

EA Output Measure 2 (OM2)				
No of households in	Before OCOR			After
	Moderate risk	Significant Risk	Very Significant Risk	Moderate risk
20% most deprived areas	378	606	9	<b>358</b>
21-40% most deprived areas	95	369	23	<b>463</b>
60% least deprived areas	38	19	2	<b>57</b>

## Other significant implications

- 12.1 **An Equalities Impact Assessment (EqIA)** accompanied the 2013 original OCOR Business Case, the assessment has been updated and will continue to be reviewed to minimise any negative impacts of OCOR (inc. CPO) upon the affected occupiers/businesses. A dedicated EqIA for the OCOR Derby Riverside Planning Application is being prepared in consultation with the Council's Lead officer on Equality and Diversity.
- 12.2 When purchasing land or property, the Regeneration team will work with the Estates and Property Review Service to ensure compliance with the Interim Property Procedure Rules and the minimisation of any associated holding costs until the scheme is brought forward.

This report has been approved by the following people:

Role	Name	Date of sign-off
Legal	Stephen Teasedale	27 February 2023
Finance	Simon Riley	27 February 2023
Service Director(s)	David Fletcher	27 February 2023
Report sponsor	Rachel North	27 February 2023
Other(s)		

<b>Background papers:</b>	
<b>List of appendices:</b>	Appendix 1A OCOR Progress to date Appendix 1B OCOR Benefits area map Appendix 1C Progress Map B Downstream Appendix 1D Progress Map A Upstream Appendix 2 Derby Riverside Land Strategy Appendix 3 Derby Riverside General Arrangement Drawings Appendix 4 Derby Riverside Concept Plan