



**COUNCIL CABINET**  
**12<sup>th</sup> February 2020**

# ITEM 11

Report sponsor: Strategic Director for  
Communities and Place  
Report author: Head of Regeneration & Major  
Projects

## **Our City, Our River (OCOR): update and next steps.**

### **Purpose**

- 1.1 The purpose of this report is to provide an update on OCOR's successful delivery to date and the financial position of the programme and to secure approval for the next steps for OCOR, including the progression of a Compulsory Purchase Order (CPO), if required.

### **Recommendations**

- 2.1 To note the successful delivery of OCOR works to date as outlined in Appendix 1A and the financial position of the project as outlined in paragraph 7.4 and Appendix 5.
- 2.2 To delegate authority to the Strategic Director for Communities and Place, following consultation with the Director of Financial Services and the Cabinet Member for Regeneration, Planning & Transportation to take all actions necessary within the approved allocation of expenditure and grant funding available to deliver the next steps for OCOR, as outlined in paragraphs 4.9 to 4.12.
- 2.3 To delegate authority to the Director of Financial Services, following consultation with the Strategic Director for Communities and Place and the Cabinet Member for Regeneration, Planning & Transportation to acquire properties required for the Derby Riverside flood mitigation measures, if a funding source is established.
- 2.4 To authorise in principle, the use of CPO powers as necessary to acquire the land and interests, identified on the Plan ("the Land") included as Appendix 3 to this report, to enable the future delivery of the OCOR priority of Derby Riverside.
- 2.5 To approve up to £2m of additional capital expenditure for the next steps for OCOR as set out in para 7.5, funded from the remainder of the OCOR grants. Note that as the full funding package to deliver the associated capital works is still not yet in place, there is a risk of this expenditure being abortive.

## **Reasons**

- 3.1 To provide information to Cabinet about the successful delivery of OCOR to date.
- 3.2 To set out OCOR's priorities for next steps until 2023. This includes the preparation and submission of the necessary documents to secure full planning consent for proposals at Derby Riverside .This will place OCOR in a much better position to secure further funding for the delivery of this important scheme. We will also be able to provide certainty for key stakeholders and landowners about how we intend to deliver OCOR in the city centre.
- 3.3 Whilst flood defence walls can be delivered without recourse to CPO, the flood mitigation enhancements proposed extend beyond merely constructing walls. Therefore, a CPO will almost certainly be needed to deliver comprehensive flood mitigation measures and environmental improvement works at Derby Riverside ("the Scheme"). This report therefore seeks Cabinet's in principle approval to use the Council's CPO powers if necessary, and outlines the work required to promote a CPO. A further report will be brought back to Cabinet outlining the land that would comprise the CPO and the justification for making a CPO, in the form of a Statement of Case, which would form the basis of the final approval to make a CPO.

## **Supporting information**

### **Background**

- 4.1 The objectives of the OCOR programme are to reduce flood risk to 1,500 homes and 700 businesses, 'make space for water', unlock economic potential on land that is at significant flood risk, deliver environmental improvements in the river corridor and protect and enhance heritage assets.
- 4.2 The OCOR Masterplan was approved by Cabinet in July 2012 to guide the provision of flood defences in Derby City and associated regeneration opportunities. The OCOR Business Case, developed jointly by the Environment Agency (EA) and the Council was approved by Cabinet in November 2013.
- 4.3 The EA's original delivery programme for OCOR was split into three packages stretching a total of 13.2km along the River Derwent, with an optimum sequence of delivering the sites within each package. The approval of the OCOR Business Case in 2013 triggered the award of grant funding totalling £36.16m from the EA and from the Department for Environment, Food and Rural Affairs (Defra), which allowed a first phase of works to start.
- 4.4 In October 2014, Cabinet approved entering into a legal agreement with the EA. This legal agreement delegates the use of the necessary EA powers to the Council to enable the delivery of OCOR and clarifies the roles,

responsibilities and liabilities of both organisations in the delivery. Under this legal agreement, the Council agreed to lead on delivering the OCOR programme and accepted responsibility for the long term maintenance and operation of the flood alleviation assets delivered. The agreement acknowledges that the Council is not committed to underwriting the cost of delivering the entire OCOR programme. Additionally, there are no 'clawback' requirements in the EA and (Defra) grant conditions that oblige the Council to repay grant or to complete the entire OCOR programme of works. In other funding agreements for the OCOR works there are risks of clawback and these implications are highlighted at para 7.9.

### **Works undertaken to date**

- 4.5 The hybrid planning application for the entire OCOR programme secured consent in December 2015. Works to the Package 1 area, covering the area north of the city centre, commenced shortly afterwards and are now nearing completion. These works will provide enhanced flood protection to over 1200 properties. Full planning consent is required for flood mitigation and alleviation works beyond the Package 1 area including Derby Riverside and Alvaston Park, which are the next priorities for delivery (see 4.9 to 4.12)
- 4.6 Local Growth Funding from D2N2 Local Enterprise Partnership was secured in 2016 totalling £12m and further funding from the European Regional Development Fund has enabled elements of Packages 2 and 3 to be delivered. These works - "Project Munio" – have brought OCOR into the city centre and are now on site. Munio delivers the flood gate on Exeter Bridge (Derwent Street); flood resilience works to the Riverside Chambers, the River Gardens and Pride Park and will deliver environmental enhancements at a number of locations along the OCOR corridor.
- 4.7 Cabinet will note that the September 2019 meeting included the approval to accept a further £1.5m of ERDF funding to deliver a new pumping station at Mill Fleam on Bass' Recreation Ground. An additional £1m of ERDF towards the cost of a new pumping station at Derwent Parade Outfall is currently in the latter stages of appraisal by Government.
- 4.8 Appendix 1 and 5 provide details of completed and planned OCOR works and forecast expenditure for 2020 to 2023.

### **Derby Riverside Priority**

- 4.9 The next critical phase in delivery of the OCOR programme focusses on the east bank of the river in the city centre, known in the OCOR programme as "Derby Riverside" (hereto referred to as "the Scheme") and shown in Appendix 2. This element of OCOR offers significant regeneration opportunities as development sites are unlocked with flood mitigation works. Progressing Derby Riverside is a priority project in the Derby City Centre Masterplan which recognises the regeneration potential of leveraging new homes and commercial development into this area unlocked by the flood resilience measures.

- 4.10 Extensive work has been undertaken to determine how best flood mitigation measures and environmental enhancements at Derby Riverside can be delivered. This work has resulted in proposed changes to the 2015 “consented” flood mitigation proposals. These changes include an alternative alignment for the boundary to the flood conveyance corridor and the unrivalled opportunity to establish a major new urban park adjacent to the city centre. These proposals would require the demolition of NatWest bank building on Derwent Street and Exeter House apartments, as included in the existing outline consent. In addition, the three office blocks fronting the river at Stuart Street would need to be demolished. A market assessment of the land and properties affected has been undertaken and an indicative masterplan design has been generated (attached at Appendix 2). The proposed Scheme will be the subject of consultations as part of the planning process.

It is acknowledged that the Scheme is currently unfunded. However, developing the masterplan, submission of a planning application for the Scheme and securing full planning consent will greatly assist efforts towards securing further funding and achieving greater cost certainty.

- 4.11 Appendix 4 contrasts the consented alignment option for Derby Riverside and the alternative alignment proposals. Cabinet is asked to note that the demolition of the Exeter House apartments is within the 2012 adopted Masterplan proposal, the hybrid 2015 OCOR planning consent and is still required to facilitate the updated alignment proposals. The next stage of design will include further flood modelling and a robust options’ appraisal; the results of this modelling and the appraisal will be included in the full planning application.
- 4.12 The following work is proposed to take the Derby Riverside scheme through to a planning consent. :

- 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.

This work can be supported by OCOR’s existing grant funding, acknowledging the abortive cost risk if funding to fully deliver the Scheme is not secured.

### **Compulsory Purchase Order (CPO) requirement**

- 4.13 The Scheme extends across land currently in multiple ownerships. There is potentially a need for the Council to exercise its CPO powers, as there is insufficient land in the control of the Council to deliver the Scheme; that is, supplementing as necessary the Council's powers of entry to undertake flood mitigation works. The use of CPO powers to ensure delivery of OCOR works and bring forward regeneration opportunities, particularly for residential development, is supported in the Derby City Local Plan.
- 4.14 In order to prepare for the making of a CPO, a number of work streams are required and there is an abortive cost risk if the Council do not ultimately apply for or gain approval for a CPO. If this spend is abortive it will be considered to be revenue costs for which there is no funding source (expenditure on the next steps work, to be incurred potentially at risk, is detailed in para 7.7).
- 4.15 Officers from Regeneration & Major Projects, Legal and Property services will work on the necessity for the CPO and the best approach for achieving it over the coming months. This will inform the Statement of Case that will need to be approved by Cabinet before proceeding with a formal CPO application. Any final adjustments to the CPO boundary will also be identified as part of this exercise.
- 4.16 Other work streams related to the CPO will include:
- Support for affected businesses, particularly the offices on Stuart Street and Derwent Street (which have an estimated 468[FTE] people employed) through a relocation strategy with support from partners such as Marketing Derby and the D2N2 Growth Hub.
  - Funding alternative accommodation for the Probation Office at 1 Stuart Street (this is Crown Property and cannot be purchased compulsorily)
  - Obtaining office copies of title information from HM Land Registry
  - Issuing notices requisitioning information from persons in relation to the Land pursuant to Section 16 of the Local Government (Miscellaneous Provisions) Act 1976
  - Developing asset management strategies to mitigate holding costs.
  - Potential further amendments to the Derby Riverside Masterplan and introduction of higher value, higher density development uses (e.g. Private Rented Schemes).
  - Updates to inform landowners and businesses in parallel with the pursuit, in principle, of a CPO.
  - Generally work to resolve matters in order to proceed with a CPO application and delivering the project; these include securing the necessary funding required to progress the flood mitigation and alleviation works and work towards procuring contractors to deliver the works.

## Risks

- 4.17 A comprehensive risk register exists for the OCOR programme, and is updated regularly. The OCOR & Munio Programme Boards and Corporate Board receive highlight reports on key risks and issues at their regular meetings. A specific project risk log will be created for the Derby Riverside scheme and monitored / managed in the same way.
- 4.18 The key strategic risks associated with the next steps contained in this report are:

Risk	Mitigation
The funding gap to deliver further OCOR works is not filled. Paragraphs 7.7 and 7.9 describe the implications of this risk materialising.	Prioritising OCOR in strategies and plans for infrastructure funding Relationships with existing funders Explore options to deliver ambitions in creative and costs effective way.
The costs of delivering the Derby Riverside scheme exceed current forecast	Risk provision in the current cost forecast is modelled in line with the Monte Carlo risk analysis method. Funding bids will be based on costs for the scheme when fully designed and consented, which will give greater cost certainty.
Negotiations to acquire premises fail	Progress a CPO
Negotiations to acquire Crown Property fail	Ongoing discussion / negotiation and work to identify alternative premises
If efforts to secure funding fail and Derby Riverside does not proceed then there is a high reputational impact	Attempt to secure all funding and finding contributions to make sure OCOR is delivered in full.
Outputs and targets required by existing funders not achieved – risk of clawback of essential funding	Regular review and assessment of historic output assumptions to be substantiated and communicated to funding partners and stakeholders.

## Public/stakeholder engagement.

- 5.1 The governance structure for OCOR includes Environment Agency representation as key delivery partner at all levels of delivery decision making. Extensive public, stakeholder and resident consultations have and continue to be undertaken throughout all delivery stages.
- 5.2 The Derby Riverside proposal extends across land currently in multiple ownerships. The potential need for a CPO is recognised to give delivery certainty and the work required to develop the case for a CPO is outlined in para 4.16. There has been ongoing discussion from 2012 with landowners and stakeholders within the Derby Riverside Area and this will continue. These include Derby Homes, (Exeter Place) the Probation Service (1 Stuart St) and the owner occupiers of a number of

commercial and residential units. A Communications plan is in place and will continue to be reviewed and updated as the work programme progresses.

## Other options

- 6.1 **Do no further works.** The OCOR works packages are designed and underpinned by flood modelling. Designs accommodate the possibility that, on the completion of each project stage, further work might cease. However, the cessation of works following the completion of works presently underway (the Package 1 and Munio projects works) is not an option supported by the OCOR Project and Corporate Boards because maximum flood protection is only provided on the completion of all OCOR works. The partnership with the Environment Agency is underpinned by a commitment to work collaboratively and deliver all 3 works packages.
- 6.2 **Do minimum:** The flood modelling that underpins the OCOR programme dictates that no further elements of work can be delivered without completion of Package 2, i.e Derby Riverside. Therefore, Derby Riverside and associated mitigation works in South Derbyshire are a minimal next phase of works beyond the current committed works contracts. The proposals in this report outline the next steps required and risks associated with progressing this. The Council could then decide, for example, not to pursue any further works in Package 3.
- 6.3 **Minimum intervention including negotiations by agreement.** The option of not pursuing a Compulsory Purchase Order, relying on land acquisition by agreement and simply with support by the use of the EA's delegated Powers of Entry, is highly unlikely to achieve the required land control interests to expediently deliver the Derby Riverside flood mitigation proposals. The benefits of delivering the OCOR flood mitigation and alleviation measures in a comprehensive fashion without risk of sections of defences not being completed are easily recognisable. However, the original expectation that sections of the OCOR masterplan would be delivered by third parties is proving challenging. The Council remains committed to engaging with land owners and developers to deliver fully integrated flood mitigation measures into their developments to help avoid only standalone walls being constructed utilising, for example, the EA's powers of entry.
- 6.4 **Pursue delivery of the entire OCOR programme** The OCOR partners agree that the whole of the OCOR programme should be completed to afford the maximum level of flood protection and to bring forward development sites that are then protected, including residential-led development in the Derby Riverside area. The significant benefits of the programme outweigh the risks which will need to be actively managed and minimised throughout the scheme delivery. The lack of full funding for the works is the major obstacle to delivery and will continue to restrict the Council's ability to deliver the project if unaddressed. The review of the OCOR Funding Strategy acknowledges the successes to date and sets out, the opportunities to secure full funding contributions for the programme.

## Financial and value for money issues

## Cost of the scheme

- 7.1 The OCOR programme was adopted and has progressed on the basis of the 2013 Environmental Agency (EA) business case calculations which at the time projected a total scheme cost of £95m. This estimate was based on the high level 2012 Masterplan proposals and did not reflect the refined alleviation measures developed since then through the formal planning process nor the recently updated costs' review. As the details of the programme evolve and take shape, the estimated cost projections are refined and currently stand at £95.47m. This assumes that the entire OCOR programme is fully completed and the next steps outlined in this report are progressed.

## Funding of the scheme

- 7.2 Since the original 2 grants from EA and Defra totalling £36.22 m, a further £17.14m of grants has since been secured from D2N2 Local Enterprise Partnership (LEP) and from European Regional Development Fund (ERDF) giving a total funding pot of £53.36m. A funding gap of approximately £40m still remains to complete the OCOR programme in its entirety.

## Financial progress to date

- 7.3 Of the £53.36m of funding available, £41.52m of this has been either spent or is committed to works, This means that £11.84m of funding is currently available to progress the next steps proposed in this report. Table 5.1 at Appendix 5 gives further detail on this.
- 7.4 A full breakdown of funding secured, costs incurred to date and committed expenditure is included in the OCOR update report at Appendix 1. The following table provides a summary of the key financial information for OCOR outlined above:

Total Funding secured (a)	£53.36m
Total Expenditure and Commitments (b)	£41.52m
Balance of funding available (a – b)	£11.84m
Total estimated cost of OCOR programme (c)	£95 m
Funding gap (c – a)	£41.64m

## Next Steps for OCOR

- 7.5 The forecast estimated costs for the next steps proposed in this report (2020-2023) are as follows.

Derby Riverside works to progress to Full Planning £1.5m  
See Table 5.2 at Appendix 5

Other works including further flood modelling, Master planning



for Alvaston Park and responding to market driven activities costs £0.5m

**Total potential expenditure £2m**

- 7.6 It is proposed to fund the cost of OCOR's next steps from the remaining £11.84m that is available from the grant received to date. However, the total cost of completing the Derby Riverside works will be in the region of £30m to £40m, for which there is no firmly identified funding as yet. This means that the full completion of the works is not certain.

If the OCOR or the Riverside Scheme doesn't progress to completion the costs incurred, including those defrayed to date would be abortive costs and would therefore:

- have to be treated as revenue
- could not be funded from the OCOR grants
- no funding source is identified to cover abortive costs

- 7.7 The costs of works on OCOR since 2015 to March 2020 which are recognised as also being at risk of being abortive are £325k.

- 7.8 The expenditure profiles for the OCOR programme are included in the Q3 Budget Monitoring report also being considered by Cabinet at their February meeting.

### **Other Financial risks associated with this report**

- 7.9 The costs of the Derby Riverside scheme are currently forecast at £30m - £40m. The work proposed in this report to progress a design and planning consent for the scheme will enable greater cost certainty and inform bids for funding to deliver the scheme. A risk contingency will remain an important element of the scheme costs throughout the design process.
- 7.10 As well as the abortive cost risk of progressing with the Derby Riverside expenditure, there is also risk of not progressing. If the further works including Derby Riverside are not progressed then the outputs agreed within funding agreements for Local Growth Funding will not be delivered in their entirety and there is a risk of clawback relative to this funding.

### **Legal implications**

- 8.1 The partnership agreement entered into by the City Council with the EA for the delivery of OCOR works endures until at least 2125; this arrangement allows the Council to use the EA's Powers of Entry to carry out flood mitigation works.
- 8.2 The Council has powers under section 226(1)(a) of the Town and Country Planning Act 1990 to compulsorily acquire land for the purposes of the development, redevelopment and improvement that would contribute to the achievement of the economic, social and environmental well-being of the area.
- 8.3 Detailed legal advice will be required to develop the Statement of Case for the

progression of a CPO. This advice will be sourced through the EM Law Share Framework and instructed through the Council's Legal Services team.

- 8.4 The Council as lead partner for delivering the OCOR programme will be taking primary responsibility for appointment of contractors and ultimately for the design and quality of the works as well as for elements to ensure the proper future maintenance and effective operation of the flood defences.
- 8.5 Consultations on the variations to the proposed revised alignment of flood mitigation defences and the associated environmental enhancement works will be undertaken to meet the formal obligations of statutory consultation in connection with the planning application and generally will be carried out as set out in para 5 above. Additionally an Equality Impact Assessment will be undertaken to identify how the proposed variations and the next stage works impact on affected persons meeting one or more of the equality strands and how mitigation measures, if any, can be taken into account on their behalf.

### **Other significant implications**

- 9.1 Progress of the Derby Riverside scheme may require the use of the Council's compulsory purchase powers and through this, or by negotiation, the acquisition of sites needed to progress the scheme. The Council's Estates and Asset Management Service are and will continue to be involved in the development of the Council's Statement of Case, in the CPO process and will lead the acquisition of sites.
- 9.2 Long term maintenance of the flood defences forming part of our own assets is the responsibility of the Council. This principle was agreed by Council Cabinet at their meeting on October 2014. The costs of maintaining existing and new flood mitigation works is to be met from maintenance budgets.
- 9.3 The current funding gap to complete delivery of all 3 OCOR packages is approximately £40m + and the project may not be successful in securing the significant allocations of funding required to complete scheme.
- 9.4 One of the properties in Derby Riverside which the revised preferred alignment requires to be demolished is a Crown Estate Property which cannot be acquired via the CPO process.

**This report has been approved by the following people:**

<b>Role</b>	<b>Name</b>	<b>Date of sign-off</b>
<b>Legal</b>	Emily Feenan	16-01-2020
<b>Finance</b>	Amanda Fletcher	17-01-2020
<b>Service Director</b>	Greg Jennings	20-01-2020
<b>Report sponsor</b>	Rachel North	22-01-2020
<b>Other</b>	Jayne Sowerby-Warrington	16-01-2020

<b>Background papers:</b>	<p>Previous Cabinet Reports:  Adoption of OCOR Masterplan: 11 July 2012  OCOR Defra Business Case Approval: 22 October 2014  OCOR Update: 09 December 2015  LEP Bid – Financial Matters: 03 August 2016  Capital receipts to OCOR: 07 September 2016  Munio Bid: 21 June 2017  Munio Funding Acceptance: 11 September 2019</p>
<b>List of appendices:</b>	<p>Appendix 1A: Update on the delivery of the Our City Our River project.</p> <p>Appendix 1B: Plan of OCOR Package Benefits Area</p> <p>Appendix 1C: Plan illustrating progress of OCOR works upstream of Derby city centre.</p> <p>Appendix 1D: Plan illustrating OCOR works downstream of Derby city centre.</p> <p>Appendix 2: Drawing to show alternative alignment of flood mitigation measures, environmental enhancement works in the Derby Riverside area and the updated Derby Riverside masterplan.</p> <p>Appendix 3: Plan delineating by red line properties potentially to be acquired under proposed Derby Riverside CPO.</p> <p>Appendix 4: Contrasting the consented alignment option and the updated, alternative alignment proposals.</p> <p>Appendix 5: Summary of OCOR funding and financial position: grants secured, costs incurred to date and</p>

committed expenditure.