

North Somerset Council

Report to Full Council

Date of Meeting: Tuesday 21 February 2023

Subject of Report: Approval of the making of a Supplemental Compulsory Purchase Order for the Banwell Bypass and Highways Improvements Scheme (“the Scheme”)

Town or parish: Banwell and surrounding parishes

Officer/Member Presenting: Councillor Steve Bridger, Executive Member for Major Infrastructure Project Delivery

Key Decision: No

Reason: This is not an Executive Decision.

Recommendations

It is recommended that the Full Council:

- a) note that following decision COU37 taken on 12 July 2022 and decision of the Leader of the Council and the Executive Member for Major Infrastructure Projects 22/23 DP241, the Council made the North Somerset Council (Banwell Bypass and Southern Link) (Side Roads) Order 2022 (“**SRO**”), and the North Somerset Council (Banwell Bypass and Southern Link) Compulsory Purchase Order 2022 (“**CPO**”) (together, “**the Orders**”) on 6 October 2022 in order to deliver the Scheme.
- b) approve the area to be the subject of a supplemental compulsory purchase order (“**the Supplemental CPO**”) edged red on the plans at Appendix 1 (“**the Supplemental CPO Plan**”), which identifies the outline area of the additional land and rights to be acquired for the Scheme (“**the Supplemental CPO Land**”) by voluntary acquisition or compulsory purchase;
- c) authorise the making of the Supplemental CPO by the Council under sections 239, 240, 246 and 250 of the Highways Act 1980 in respect of all or part of the Supplemental CPO Land, which includes any land or rights that may be required for environmental enhancement and mitigation, flood compensation, replacement land provision or otherwise needed for the Scheme;
- d) authorise all necessary steps to be taken to secure the making, confirmation and implementation of the Supplemental CPO, including the publication and service of all notices, requisitions for information, statement of reasons and the preparation and presentation of the Council’s

case at any public inquiry required to secure confirmation of the Supplemental CPO by the Secretary of State;

- e) note, and give due regard in determining whether or not to authorise the making of the Supplemental CPO, the public sector equality duty contained in section 149 of the Equality Act 2010 and the requirements of the Human Rights Act 1998, as detailed further in sections 5 and 11 of this Report;
- f) authorise agreements to be entered into with landowners to secure the withdrawal of objections to the Supplemental CPO and to authorise the Director of Place and the Director of Corporate Services to take all necessary steps to acquire by agreement land and/or rights over the Supplemental CPO Land, subject to any consideration payable being within the Scheme budget as set out in section 7 of this Report;
- g) subject to confirmation of the Supplemental CPO, delegate the authority to the Director of Corporate Services, the Director of Place, and the Assistant Director Legal & Governance and Monitoring Officer to acquire all the land and rights over the Supplemental CPO Land, including service of a general vesting declaration, notice to treat and/or notice of entry, subject to any compensation to be paid being within the Scheme budget as set out in section 7 of this Report;
- h) delegate to the Executive Member for Major Infrastructure, in consultation with the Director of Place, the authority to make any necessary amendments to the Supplemental CPO;
- i) delegate to the Director of Corporate Services, the Director of Place and the Assistant Director Legal & Governance and Monitoring Officer (or the Executive Member for payments of over £500,000) the authority to negotiate and settle all necessary compensation and professional fees (including interim payments) either as agreed with landowners or as determined by the Lands Chamber of the Upper Tribunal in relation to the acquisition of land or rights forming part of the Supplemental CPO Land in accordance with the Land Compensation Act 1961, the Compulsory Purchase Act 1965 and the Land Compensation Act 1973 provisions in force at the relevant time and the body of case law relevant to the assessment of compensation, where any compensation to be paid is within the Scheme budget as set out in section 7 of this Report;
- j) delegate to the Senior Responsible Officer (Alex Fear) the authority to enter into agreements with landowners to secure the withdrawal of objections to the CPO and/or the Supplemental CPO and to negotiate and settle all necessary compensation and professional fees (including interim payments) by agreement with landowners in relation to land interests included in the CPO and/or the Supplemental CPO (for any financial threshold), subject to the delegation being limited to applying only:

- i. prior to the closing of any public inquiry required for the CPO and/or Supplemental CPO;
 - ii. where the approval of the agreement terms and the compensation value is required on an urgent basis in order to secure the withdrawal of objection(s) to the CPO and/or the Supplemental CPO; and
 - iii. where any compensation to be paid is within the Scheme budget as set out in section 7 of the Report.
- k) authorise the instruction of the Scheme Project Team's legal advisers, Burges Salmon LLP, to prepare and serve such documentation as may be required for the Supplemental CPO.

1 SUMMARY OF REPORT

- 1.1 The following Council decisions have preceded this Report:
- 1.2 On 16 June 2020, the Council approved an increase in the Council's Capital Programme by £97,067,550.00 in response to receiving approval and funding in relation to the Housing Infrastructure Fund ("**HIF**") (Forward Fund) in order to finance the Scheme.
- 1.3 On 7 October 2021, the Executive Member for Assets and Capital and the Director of Place approved route 2 of the three northern route options as the preferred route for the proposed Banwell Bypass (see decision 21/22 DP 213).
- 1.4 On 28 April 2021, the Executive authorised all the steps necessary to prepare for the making of a CPO for the Scheme and to enter into voluntary agreements with landowners for the acquisition of land and rights required for the Banwell Bypass, subject to relevant financial limits (see decision EXE 13).
- 1.5 On 12 July 2022, Full Council authorised the approval of the making of Compulsory Purchase Order(s) (and related Side Roads Orders and Traffic Regulation Orders) for the Banwell Bypass and Highways Improvement Scheme (see decision COU37).
- 1.6 The final form and submission of the Orders to the Secretary of State for Transport ("**SoSft**") was approved in delegated decision DP241, which

approved amendments to the CPO red line boundary and authorised the submission of the orders which were the subject of that decision to the Secretary of State for Transport. The orders were made on the 6 October 2022 and submitted to the SoSfT for confirmation.

1.7 On the 18 July 2022, a planning application for the Scheme (reference 22/P/1768/R3EIA) (“**the Planning Application**”) was submitted to the local planning authority (“**LPA**”). The Planning Application is for:

- the construction of a 3.3km single carriageway road from the A371 Summer Lane to A368 Towerhead Road, including a 3m shared use path to Sandford, one bridge, ten culverts, associated infrastructure, and landscaping.
- Construction of a 0.63km (including junction link to Banwell Bypass) single carriageway Southern Link Road, including associated infrastructure and landscaping.
- Mitigation and enhancement measures, which consist of environmental mitigation and enhancement measures in connection with the Banwell Bypass and the Southern Link including flood compensation areas, planting and habitat creation, attenuation basins, associated infrastructure and landscaping.
- Placemaking improvements within Banwell, comprising mitigation and enhancement measures to the public realm.
- Active travel routes including works to footpaths, cycleways and bridleways.
- Improvements to the wider local road network in Sandford, Churchill, Locking and Winscombe and creation of shared use paths between Sandford and Churchill and Langford and Churchill.

1.8 Following the submission of the Planning Application, comments were received from Natural England (“**NE**”) North Somerset Council (Natural Environment) (“**NSCNE**”) and the Avon Bat Group (“**ABG**”) as part of the

statutory consultation on the Scheme. It was asserted that the Scheme requires the additional mitigation in order to mitigate the potential impacts of the Scheme on bat populations (“**the Additional Mitigation**”), particularly those present in the North Somerset and Mendip Hills Bat Special Area of Conservation (“**SAC**”). Further detail is contained in the representations from NE (Appendix 2) and NSCNE (Appendix 3) regarding the original approach to bat mitigation. Further comments were exchanged and site meetings were held (see further below). Natural England agreed to the revised proposal for increasing the mitigation to be provided in correspondence dated 20 January 2023 (Appendix 4).

- 1.9 This report seeks authorisation to use CPO powers to secure the land and rights required to deliver the Additional Mitigation, in case voluntary negotiations are unsuccessful. A Supplemental CPO is being promoted by the Council as a result.

2 POLICY

Summary

- 2.1 The Planning Application for the Scheme is being considered against the national, regional and local planning policy framework. Please refer to COU37 where a more detailed overview is provided of all policy considerations, including the North Somerset Council Core Strategy, Site and Policies Part 1: Development Management Policies, Emerging Local Plan Policies, and the Corporate Plan. The policy framework remains the same for the decision subject to this Report.
- 2.2 The delivery of the Additional Mitigation supports and strengthens the planning case in support of the Scheme and further ensures that it meets policy requirements. It addresses comments made by key statutory consultees, NE and NSCNE. Further information has been submitted as part of the Planning Application to be considered by the LPA. The requirements of the Additional Mitigation areas have been determined by reference to relevant planning policy and also to the ‘North Somerset and

Mendip Bats Special Area of Conservation Guidance on Development: Supplementary Planning Document' (“**the SPD**”), adopted in January 2018. The SPD contains guidance on the approach to assessing development with the potential to impact on the SAC. The Additional Mitigation proposals also take into account a further guidance document prepared by Mendip District Council and adopted in May 2019 which provides guidance on development affecting the Mendip District Bat Special Areas of Conservation.

3 DETAILS

Background

- 3.1 Full details of the Scheme are outlined in detail in COU37, including Scheme Objectives, Scheme description, the Banwell Bypass, the Southern Link Road, Mitigation Measures, Place making Improvements within Banwell, Improvements to the wider local road network, Rights of Way to be Stopped Up, funding and viability. This Report almost exclusively addresses matters relevant to the Supplemental CPO (rather than the Scheme CPO).
- 3.2 The Additional Mitigation is shown on the updated Environmental Masterplans (sheets 1 to 5) at Appendix 5 (“**the EMPs**”).
- 3.3 In summary, the Planning Application has been revised to provide an additional 7.7ha land for bat mitigation, as follows:
 - a) Court Farm = 2.6ha
 - b) Traditional Orchard = 1.1ha
 - c) North of A368 = 0.4ha,
 - d) Eastermead Farm = 3.6ha
- 3.4 These additional land parcels would reinforce the wider approach to mitigation and have been requested by NE and NSCNE. The changes would reduce the linearity of mitigation proposed along the Scheme and provide enhanced connectivity and permeability for bat species across the wider landscape, especially to the north and east of the Scheme and follow a precautionary approach to assessing the effect on the SAC.

3.5 The delivery of the Additional Mitigation involves either:

- a) increasing the extent of the land/rights required for the Scheme to provide additional essential bat mitigation through the addition of new CPO plots; or
- b) increasing the scope the original proposed CPO to change from the acquisition of rights over plots to the acquisition of title to ensure that the mitigation can be delivered, which cannot be done through a modification to the existing CPO (therefore necessitating the Supplemental CPO).

3.6 The Additional Mitigation is proposed at key locations, as described below and shown on the Environmental Masterplans (Appendix 5). The following amendments are considered to be the key changes, described in relation to the revised Environmental Masterplans:

- a) **Sheet 1:** three additional bat hop overs have been proposed. A proposed tree has been removed and some scattered tree planting has been removed and revised to scrub due to the need to ensure access to water main easements.
- b) **Sheet 2:** In the vicinity of the Wallymead Rhyne culvert at Stonebridge Farm and to the east and west of Wolverhill Road, to mitigate for the street lighting at Wolverhill Junction. Four additional bat hop overs have been proposed over the bypass carriageway with additional woodland to be added. A note has been included regarding the alignment of the shared use path west of Wolverhill Road and revision of some of the proposed landscaping in this area due to utility asset easements. The additional land will be planted with scattered trees, creating copses of orchard and retaining hedge lines during construction. Scrub and woodland edge have been added to bulk up the hedgerow at a proposed mammal culvert.
- c) **Sheet 3:** A native hedgerow with trees is proposed along the Moor Road to Riverside Link. Further native hedgerows and

trees are proposed north of proposed attenuation basin no. 2. An area of landscaping has been revised to scrub due to utility asset easements. The Traditional Orchard shall be managed for bats and benefit from further orchard planting.

- d) **Sheet 4:** The new hedgerow around the replacement football club land will be planted with individual trees and will be managed. Where the hedgerow along Eastermead Lane is intersected by the Scheme and at the Eastern Junction of the A368, where the land would be built up using site won material. The elevation of the land, southeast of the Banwell East Junction (and associated bat hop over locations on the bypass carriageway and A368), have been increased to promote a bat hop over. The additional land, north of the bypass carriageway, would be planted with trees and shrubs. The height of the hop over would be increased to tie in with the tree canopy of Banwell Wood. Heavy standard trees have been added to enhance connectivity at the western and eastern end of the proposed culvert 6. North of the location that the shared use path joins the bypass carriageway alignment, trees have been moved due to utility asset easement. The proposed planting in the vicinity of the overhead cables has been revised to scrub.

- e) **Sheet 5:** Field at Eastermead farm, added to the Scheme to provide further foraging and commuting opportunities. Three additional bat hop overs are proposed. Proposed woodland shall be extended to facilitate the bat hop over west of Southern Link Banwell Village Junction. Three landscaped areas, have been revised to scrub due to water main easements alongside tree planting, southwest of proposed attenuation basin no. 7.

3.7 The changes to the Planning Application have been made following discussion and agreement with NE and NSCNE. Further to the statutory consultation with NE, NSCNE and the ABG, the Council is confident that it

has addressed bat mitigation concerns through the above changes to the Scheme.

3.8 The Planning Application is due to be considered by the Planning & Regulatory Committee on 22 February 2023 and a decision will be made as to whether to grant planning permission for the Scheme.

The CPO Land

3.9 The Supplemental CPO Plan at Appendix 1 identifies the extent of the land and rights required for the Scheme. This sub-section sets out an overview of the land included in the Supplemental CPO, in particular the site of the Additional Mitigation land.

Description of land to be included in the Supplemental CPO

3.10 The Supplemental CPO Land (as demarcated on the Supplemental CPO Plan) is described below:

- a) Land at Court Farm from Wolvershill Road to Crooks lane, which includes agricultural land fields, hedges and access tracks.
- b) The Supplemental CPO Land incorporates and retains the Traditional Orchard on Riverside. The land includes boundary hedges, trees and outbuildings and is proposed to be enhanced for the purposes of ecological mitigation.
- c) North of the A368, a strip of land bordering the A368 is proposed to be acquired which is currently agricultural land and associated features.
- d) Land at Eastermead Farm (currently owned by the Council subject to an agricultural tenancy agreement) is included in the Supplemental CPO Land to ensure that vacant possession can be secured. The land includes typical agricultural features such as fields, hedges and access.

Need for Compulsory Purchase Powers

3.11 The Highways Act 1980 authorises the Council, as highway authority, to compulsorily acquire land that is required for the construction or improvement of a highway. The relevant statutory provisions are set out in section 9 below. The Supplemental CPO Land is required for delivery of the Additional Mitigation (which forms part of the Scheme) and, where applicable, conforms to the distance limits on compulsory acquisition contained in the 1980 Act.

3.12 Government guidance provides further advice on the use of compulsory purchase powers. The Department for Levelling Up, Housing and Communities '*Guidance on Compulsory purchase process and The Cribel Down Rules*' (2019) ("**the CPO Guidance**") states:

- a) Compulsory purchase powers are an important tool to use as a means of assembling the land needed to help deliver social, environmental and economic change. Used properly, they can contribute towards effective and efficient urban and rural regeneration, essential infrastructure, the revitalisation of communities, and the promotion of business – leading to improvements in quality of life.
- b) A compulsory purchase order should only be made where there is a compelling case in the public interest.
- c) Compulsory purchase is intended as a last resort to secure the assembly of all the land needed for the implementation of projects.

3.13 The need for the Supplemental CPO is driven by the requirements of the statutory consultees, NE and NSCNE, in requiring additional mitigation land to protect against adverse impacts on bats and the SAC, which may be affected by the Scheme. If the Council does not provide the Additional Mitigation as part of the Scheme, then NE and NSCNE will maintain objections to the Planning Application and there is a high risk of the LPA refusing to grant planning permission.

- 3.14 The Supplemental CPO is anticipated to be needed to deliver the Additional Mitigation. There is, therefore, a compelling case in the public interest for the same reasons as the case exists in respect of the wider Scheme.
- 3.15 Further details regarding the need for the Scheme for the alleviation of congestion, the enabling of new housing, the economic benefits, and the complexity of land assembly are outlined in detail in the report accompanying decision COU37.
- 3.16 Assuming that, as a result of objections to the Orders and Supplemental CPO, public inquiries will need be held, it is intended that a request will be made to the SoSfT to conjoin the inquiries. This is an administrative step and will be subject to the views of the Planning Inspectorate and SoSfT, as well as the timings of the various orders for the Scheme which are being promoted by the Council.
- 3.17 The advantage to taking this approach is that the same Inspector will hear the issues and make the decision. This will assist with consistency of decision-making and would allow for costs savings for the Council as only one inquiry would need be held (although that inquiry would be considering more issues). It is also likely to be of assistance to any objectors who wish to present evidence in relation to the Orders and/or Supplemental CPO.
- 3.18 Whilst a request is anticipated to be made to conjoin the inquiries, the CPO and the Supplemental CPO will still be confirmed (or not) separately by the SoSfT. The CPO and Supplemental CPO are parasitic on each other and both will need to be confirmed to ensure that the Scheme can be delivered. However, the CPO and the Supplemental CPO will be assessed as two separate, albeit inter-linked, legal instruments.

Summary of Negotiations

- 3.19 All of the owners of land impacted by the Supplemental CPO have been contacted by the Council, via its appointed agents. The landowners have been advised of the extent of the Supplemental CPO and the need for it. Discussions regarding the acquisition of land and rights within the Supplemental CPO Land are ongoing.

3.20 The affected landowners have all been provided previously with heads of terms which propose terms for entering into an option agreement to acquire the necessary interests in land included in the original CPO. The heads of terms will be updated as necessary to incorporate the land and rights incorporated in the Supplemental CPO.

3.21 Part of the Supplemental CPO Land is owned by the Council and subject to an existing tenancy agreement. Negotiations with the tenant are ongoing.

Human Rights Act and Evidence of Compliance

3.22 The Human Rights Act 1998 incorporated into domestic law the European Convention on Human Rights (“**the Convention**”). It includes provisions in the form of Articles which aim to protect the rights of the individual.

3.23 Paragraph 12 of the CPO Guidance sets out how an acquiring authority should take into account Human Rights:

“An acquiring authority should be sure that the purposes for which the compulsory purchase order is made justify interfering with the human rights of those with an interest in the land affected. Particular consideration should be given to the provisions of Article 1 of the First Protocol to the European Convention on Human Rights and, in the case of a dwelling, Article 8 of the Convention.”

3.24 The Human Rights Act 1998 incorporated into domestic law the provision of the Convention. The relevant articles can be summarised as follows:

- a) Article 1 of The First Protocol ‘Protection of Property’: protects the rights to peaceful enjoyment of possessions. No one can be deprived of their possessions except in the public interest.
- b) Article 6 of the Convention Rights and Freedoms ‘Right to a fair trial’: entitles those affected by compulsory powers to a fair and public hearing.
- c) Article 8 of the Convention of Rights and Freedoms ‘Right to respect for private and family life’: protects the right of the

individual to respect for his private and family life, his home and his correspondence. Interference with this right can be justified if it is in accordance with law and is necessary in the interests of, among other things, national security, public safety or the economic wellbeing of the country.

- d) Section 6 of the Human Rights Act 1998 prohibits public authorities from acting in a way which is incompatible with rights protected by the Convention.

3.25 The Supplemental CPO, if made, may infringe the human rights of persons with an interest in land. This infringement is authorised by law provided that:

- a) There is a compelling case in the public interest for the compulsory acquisition powers included within the CPO, and that proper procedures are followed.
- b) Any interference with a human right is proportionate and otherwise justified.

3.26 The Supplemental CPO does not require the acquisition of residential or commercial properties. There is agricultural land which will need to be acquired.

3.27 It is recognised that the Scheme may have an impact on individuals; however, this is outweighed by the significant public benefits that will arise from the Scheme, as set out in this Report. The Council must strike a fair balance between the public interest in seeing the Scheme proceed (which is unlikely to happen in the absence of the compulsory acquisition powers being obtained) and the private rights which would be affected by the compulsory acquisition.

3.28 In relation to both Articles 1 and 8, the compelling public interest case for the compulsory acquisition powers included within the Supplemental CPO has been demonstrated in this Report. The land over which compulsory acquisition powers are sought is the minimum necessary to ensure the delivery of the Scheme. The Scheme has been designed to minimise

detrimental impacts, whilst achieving its publicly stated objectives. In this respect the interference with human rights is both proportionate and justified.

3.29 In relation to Article 6 it is the case that proper procedures have been followed for both the consultation on the Scheme and for the determination of the compulsory purchase powers included within the scheme. Throughout the development of the Scheme, persons with an interest in the land have had full opportunity to comment on the proposals in a non-statutory capacity, and the Council has endeavoured to engage with landowners. The Council has been responsive to landowner feedback in both the initial design of the scheme and in iterative design changes throughout the development of the Scheme. The approach which has been taken to considering alternatives and design changes is explained further in section 13 of this Report. Further statutory consultation will be undertaken when the planning application is submitted.

3.30 Any person affected by the exercise of compulsory acquisition powers may be entitled to compensation.

4 CONSULTATION

4.1 The Council has undertaken a wide range of consultation with the public, statutory environmental bodies and other key stakeholders in relation to the Order. Summaries of the main consultation undertaken for the Scheme, non-statutory consultations July-August 2021, March –April 2022 Environmental Consultees, Internal North Somerset Council consultation and consultation with other key stakeholders is outlined in detail in COU37. Since the submission of the Planning Application there has been further statutory consultation as outlined below.

4.2 Where relevant and feasible, all feedback received as part of the consultation has been used to develop the design of the Scheme.

Environmental Consultees

4.3 The Report accompanying decision COU37 details the non-statutory consultation, which was undertaken prior to submitting the Planning Application and is not repeated in this Report. As part of the process of determining the Planning Application, the LPA undertook statutory consultation with statutory consultees, the public and other key stakeholders. Save as relevant to this Report, the detail of that consultation is not set out here because it relates the Planning Application in respect of which the CPO has already been made.

4.4 This section contains an outline of the consultation relevant to the Additional Mitigation only.

- a) A meeting was held between the Banwell Bypass project team and representatives from NE and NSCNE on 5 October to discuss NE and NSCNE's representations on the planning application, including the design of the Scheme, mitigation and surveys undertaken.
- b) A site meeting was held on 21 October with the Banwell Bypass project team and representatives from NE and NSCNE. This included a site walkover concentrating on key areas of interest and discussion of potential further mitigation areas for the Scheme.
- c) NE (25 November) and NSCNE (10 November) provided further comments on the Planning Application and the further information submitted by the Banwell Bypass project team.
- d) A final meeting was held on 28 November at which detailed amendments to the Scheme were discussed, including additional mitigation land, as well as updates to supporting technical notes and figures.

Planning Consultation

4.5 The Council submitted supplemental planning information to the LPA in December 2022 explaining a number of changes to the Planning

Application, which have been deemed to be necessary following the initial consultation on the Planning Application over Summer 2022. The Council carefully considered all initial consultation information and has made changes to the Scheme as a result. This includes the Additional Mitigation.

- 4.6 The LPA conducted a further consultation on the amended proposals in the Planning Application from 19 December 2022 to 28 January 2023. Many of these comments reflected amendments to the wider mitigation proposals not the additional bat mitigation. The project team are working with the LPA to respond to any comments that require a response.

Internal North Somerset Council Consultation

- 4.7 A briefing was held with the Executive Members for Major Infrastructure and Highways and Transport on 12 December. This briefing was extended to ward members.
- 4.8 A presentation was shared with all Councillors which summarised the information to be re-consulted upon for planning, including the requirements of the Additional Mitigation.

5 FINANCIAL IMPLICATIONS

- 5.1 Before confirming the CPO, the Secretary of State will need to be satisfied that the scheme for which the CPO is sought is viable and likely to proceed. This section sets out headline information about the costs relevant to the acquisition of the land and rights required for the delivery of the Additional Mitigation and the funding which is in place. The detail of the costs and funding of the CPO and the wider Scheme is set out in the report accompanying decision COU37.
- 5.2 The cost of progressing the Supplemental CPO and delivering the Additional Mitigation will be accommodated within the project budget.

Funding

- 5.3 As explained in the report accompanying decision COU37, the HIF Grant Development Agreement (“**GDA**”) was entered into between the Council

and Homes England. The GDA governs the funding for the Banwell Bypass. The total funds available are approximately £97,100,000 (which have been allocated to build the new bypass of the village of Banwell, fund online improvements to the surrounding highway network, improve the area's utilities network, and provide an expansion of the Winterstoke Hundred Academy secondary school in Locking Parklands). The funding which is specifically available for the Scheme is approximately £65,300,000. It is available in two tranches:

- a) Stage 1 (preliminary): approx. £17,300,000. This includes the costs of the design work, land acquisition and securing the Orders and Supplemental CPO.
- b) Stage 2 (construction): approx. £48,000,000. This relates to the construction costs for delivering the Scheme.

5.4 The costs of delivering the Scheme are under review by the Council given the well-known issues being caused by inflation and increases in construction costs, including materials and labour across the construction industry. Full Council will be given a further update on this in due course.

5.5 However, it is important to note that the authority sought in this Report relates only to the acquisition of land and rights required for the Additional Mitigation land and delivery of the Additional Mitigation. These costs are limited when compared to the costs of delivering the Scheme as a whole, and have no material impact on the funding available to the Council to deliver the Scheme.

Stage 1 funding

5.6 The Stage 1 funding has already been drawn down and is available. It is this funding which is primarily relevant to the resolutions proposed in this Report because it includes the costs of land acquisition (whether voluntarily or by compulsory purchase).

- 5.7 The decision to proceed with the Supplemental CPO and assemble the Additional Mitigation land therefore has all necessary funding already available. The budget for land acquisition within the Stage 1 funding is sufficient to meet the costs based on the current property costs estimates, which are set out in the costs section below.
- 5.8 As explained above, the Council is likely to request that any inquiries required for the Orders and Supplemental CPO are conjoined which will further limit and costs implications of promoting the Supplemental CPO.

Stage 2 funding

- 5.9 The Stage 2 funding relates to the construction costs of the Scheme. Prior to drawing down the Stage 2 funding, further approval is required from both Homes England and either the Executive or Full Council (as appropriate).
- 5.10 Before being able to draw down on the Stage 2 (construction) funds, the Council must provide certain information and documents to Homes England, including:
- a) a copy of the grant of planning permission and any other consents required for that part of the infrastructure works that are the subject of the claim;
 - b) a satisfactory valuation in respect of the infrastructure site; and
 - c) certificate of title in respect of ownership or rights over the infrastructure site.

- 5.11 It is therefore a requirement for the Council to secure legal and beneficial ownership and vacant possession of all land and rights required for the Scheme (i.e. those required for the bypass, online improvements and utility upgrades), including the Additional Mitigation land. The land must be secured and the Scheme delivered by certain defined dates. All of the land and rights required for the Scheme – including the Additional Mitigation Land – will need to be acquired in accordance with the terms of the GDA.

- 5.12 It is this requirement to acquire the land interests in advance of the defined dates which drives the need for the Supplemental CPO. If the Scheme (as amended through the planning process) is not supported by the exercise of compulsory purchase powers this could result in significant delays to the acquisition of land, which may result in the Council not being able to meet the defined dates in the GDA. This could lead to the Council not being able to draw down the Stage 2 funding for construction.
- 5.13 As explained in the report accompanying decision COU37, there is some inherent risk in not being able to meet the defined dates as a result of slippage in the Scheme programme. However, based on the current milestones in the GDA and the current progress of the Scheme, it is reasonable to conclude that the Stage 2 funding will be available. Homes England is consulted regularly and there is the potential to agree changes to the funding milestones if needed (although this should not be relied upon).
- 5.14 As will be noted in relation to costs (below), the Stage 2 funding available through the GDA is necessary to support, progress and deliver the Scheme. Subject to the review of construction costs which is being undertaken by the Council (as referred to above), the level of funding allocated is considered sufficient to cover the anticipated costs of Scheme construction and associated consultant and professional costs. This includes the Additional Mitigation land. It should be noted that the Council is required to fund any costs overruns which exceed the total HIF budget. There is potential for funding to be available through developer contributions secured through section 106 agreements towards improvements in the area. As things stand, however, it is not anticipated that such alternative funding will be required.
- 5.15 The risk of the Council being exposed to a funding deficit as a result of failing to meet the GDA milestones is mitigated by the phased approach of delivering the Scheme.
- 5.16 Before commencing the construction of the Scheme (reliant on the Stage 2 funds), the Project Team will be in a position to evaluate progress against the GDA milestones and ensure that the timescales can be met before the

funding is drawn down and any costs are incurred. As mentioned above, the decision to draw down the Stage 2 funds is also subject to prior approval and scrutiny from Homes England and the Executive.

5.17 The risk of any abortive costs from Stage 1 if the decision has to be taken not to proceed with Stage 2 is mitigated by the staggered approach to land acquisition. The availability of funding can be reviewed following confirmation of the CPO but prior to it being implemented and the land being vested in the Council which would trigger the compensation liability. The CPO could, if necessary, be aborted at that stage. Again, this would apply to the Additional Mitigation land as well as the wider Scheme.

5.18 Similarly, for agreements entered into voluntarily with affected landowners, it is proposed, where possible, to enter into option agreements to secure the land interests. This will reduce the upfront costs payable by the Council, and the options can then be exercised when possession is required, triggering the consideration payable under the terms of the agreement. If the Scheme does not progress for any reason, the options need not be exercised.

Costs

Stage 1 costs

5.19 High level property costs estimates have been prepared by the Council's advisers for the costs acquiring the Additional Mitigation land. These estimates are subject to further analysis and updates as the design of the Scheme and construction working requirements are finalised. The estimates are also unpinned by a number of assumptions and caveats which could cause them to change as further analysis is undertaken.

5.20 The current estimate which has been provided for the costs associated with acquiring the Additional Mitigation land is £304,704 (a total of 7.7ha of land) (see the Fisher German report dated December 2022 at Appendix 7).

5.21 Even acknowledging the potential for this estimate to change, there is comfortable headroom in the current Stage 1 budget to acquire the land

interests required for the Additional Mitigation land (whether by compulsion or agreement).

Stage 2 costs

- 5.22 The current construction cost estimate attributed to the Scheme as a whole are set out in the report accompanying decision COU37. As mentioned above, the overall Scheme costs are currently being reviewed. However, the delivery of the Scheme is a priority for the Council and in the event of a funding deficit once the Scheme costs are updated, additional sources of funding will be considered. This report does not infer any new funding commitments on behalf of the Council.
- 5.23 The Stage 2 costs will then be reviewed against the funding available prior to construction commencing.
- 5.24 There is, therefore, not considered to be any funding impediment to the Scheme.

6 LEGAL POWERS AND IMPLICATIONS

Compulsory Purchase Order

- 6.1 The Council's powers of compulsory purchase to acquire land and interests in land for the Scheme are contained in the Highways Act 1980.
- 6.2 It is a condition of the exercise of the relevant compulsory purchase powers that the land in question is "required" for a particular purpose. The Additional Mitigation land to be acquired by the Council is required for the following purposes under the relevant sections of the Highways Act 1980:
- a) Section 239: for the construction and improvement of a highway which is to be a highway maintainable at the public expense.
 - b) Section 240: for the improvement of a highway and to acquire land necessary for implementing the SRO.

- c) Section 246: for the mitigation of any adverse effect which the existence or use of a highway constructed or improved has or will have on the surrounding of the highway.
- 6.3 In addition the Council may, under section 250 of the Highways Act 1980, provide for the creation of new rights over land as well as for the acquisition of rights already in existence.
- 6.4 Section 249 of the 1980 Act sets out distance limits from the middle of the existing or new highways beyond which land to be acquired must not exceed. These limits do not apply to land and rights required for mitigation of the adverse impacts of the Scheme. The land and rights required for the construction or improvement of the Banwell Bypass and Southern Link are within these limits.
- 6.5 The Acquisition of Land Act 1981 governs the procedures, which apply to compulsory acquisition. The Compulsory Purchase Act 1965 governs post-confirmation procedures and the Land Compensation Act 1961 governs the amount and assessment of compensation. The Local Government (Miscellaneous Provisions) Act 1976 governs the granting of new rights. Further implications relating to requirements of the CPO Guidance are as set out above and would need to be considered by Full Council in detail at the time of making the Order.
- 6.6 The primary legal implication of not securing a CPO is that the land required for the Additional Mitigation may not be capable of being secured, or alternatively may not be secured in line with the Scheme milestones. Additional risks relevant to securing the CPO are set out in section 12 of this Report.
- 6.7 Public law principles will also apply to the decisions made by the Council in relation to the Scheme, including the Council's duty to take account of its fiduciary duty and to act prudently with public monies. The Council is also under a general duty to act reasonably and show that its decisions in relation to the delivery of the project are made after having given due and proper consideration to all relevant factors (disregarding irrelevant factors). The

Council must conscientiously consider the results of any public consultation undertaken in relation to the proposals.

7 CLIMATE CHANGE AND ENVIRONMENTAL IMPLICATIONS

7.1 The purpose of this Report is to secure authority to make, confirm and implement the Supplemental CPO required to assemble land and deliver the Additional Mitigation, and to authorise the acquisition of land required for the Scheme. An assessment of the climate change and environmental implications of the Additional Mitigation were undertaken as part of the planning process and will be considered by the Council, in its role as local planning authority, in determining the Planning Application. However, the report accompanying decision COU37 outlines a high level summary of the likely significant effects of the Scheme. The delivery of the Additional Mitigation land is not considered to represent any material change to the assessment of the Scheme as a whole.

8 RISK MANAGEMENT

8.1 A detailed outline of the risks related to the use and implementation of CPO powers by the Council is outlined in COU37.

9 EQUALITY IMPLICATIONS

9.1 In order to satisfy the public sector equality duty (“**PSED**”), pursuant to section 149 of the Equality Act 2010 the Council must have due regard to the need to:

- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- advance equality of opportunity between persons who share a relevant protected characteristic (as defined in the Act) and persons who do not share it; and
- foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

- 9.2 An Equality Impact Assessment (“**EIA**”) was previously undertaken for the Scheme and was appended to the report accompanying decision COU37. A further EIA has been undertaken considering land acquisition issues relating to the Additional Mitigation (see Appendix 6).
- 9.3 Further information relating to the EIA process can be found in the report accompanying decision COU37.
- 9.4 In order to comply with the PSED the Council must continue to monitor and consider equality issues routinely throughout the implementation of the Scheme. This includes the need to consider the duty in relation to the CPO process, such as ensuring that notices are served in a way which is accessible to any protected groups and that any public inquiry is accessible. The EIA will be reviewed and updated as necessary as the Supplemental CPO and is progressed.
- 9.5 Similarly, a Health Impact Assessment (“**HIA**”) was prepared to inform the Planning Application and was appended to the report accompanying decision COU37. It is not considered that the delivery of the Additional Mitigation Land has any material impact on the existing HIA for the Scheme.

10 CORPORATE IMPLICATIONS

- 10.1 An outline of how the Scheme supports the Council’s corporate objectives and opportunity for the scheme to enable housing allocations under the new emerging Local Plan are provided in the report accompanying decision COU37.

11 OPTIONS CONSIDERED

- 11.1 The land assembly for the Scheme is complex and is highly unlikely to proceed without the use of compulsory purchase powers. Negotiations with landowners are proceeding, and wherever possible voluntary agreements will be entered into.
- 11.2 However, the need for the Supplemental CPO is driven by the risk posed by reliance on voluntary negotiations because:

- a) It is unlikely that all affected landowners will enter into agreements voluntarily.
- b) The GDA requires vacant possession to be secured and construction to be undertaken in accordance with defined dates. If compulsory purchase powers are not utilised, this could result in delays to land assembly which may prevent the Council from being able to draw down funding under the GDA for the construction of the Scheme.

11.3 Therefore, the most likely alternative to the use of compulsory purchase powers is that the Scheme will not proceed.

11.4 The need for the Additional Mitigation land is due to the requirements of the statutory consultees, NE and NSCNE. Whilst the location and siting of the Additional Mitigation has been carefully considered, there are limited options for where to site the Additional Mitigation because it has to be based on where it will be effective.

11.5 The Council has considered not agreeing to the delivery of the Additional Mitigation. However, without delivering the Additional Mitigation objections the Planning Application would be maintained NE and NSCNE and there is a significant risk that the Planning Application would be refused as a result.

11.6 The Additional Mitigation land is therefore necessary to secure the grant of planning permission for the Scheme, and the Supplemental CPO is necessary to secure the land and rights required to deliver the Additional Mitigation.

Author:

Burges Salmon on behalf of:
Alex Fear, Senior Responsible Officer

12 APPENDICES:

Public appendices

- a) **Appendix 1:** Supplemental CPO Plan
- b) **Appendix 2:** Correspondence from Natural England dated 2 September 2022
- c) **Appendix 3:** Correspondence from NSC Natural Environment dated 17 October 2022
- d) **Appendix 4:** Correspondence from Natural England on 20 January 2023
- e) **Appendix 5:** Environmental Masterplans
- f) **Appendix 6:** Equality Impact Assessment for Additional Mitigation

Exempt appendices

- a) **Appendix 7:** Fisher German report dated December 2022

Background Papers:

- a) Previous Council decisions as detailed in the report