

Wiltshire Council

Cabinet

21 July 2021

Subject: Future Chippenham

Cabinet Member: Cllr Richard Clewer, Leader of the Council and Cabinet Member for MCI, Economic Development, Heritage, Arts, Tourism and Health & Wellbeing

Key Decision: Key

Executive Summary

The Future Chippenham programme was progressing in accordance with the approval given by Cabinet in October 2020 and the subsequent signing of the Grant Determination Agreement (GDA) for Housing Infrastructure Funding (HIF) with Homes England in December 2020.

On 29th June 2021, Cabinet agreed that further work be undertaken on the Local Plan review (LPR) in response to the consultation on key parts of the evidence base including testing the upper and lower levels and spatial distribution of the range of housing need for the plan period. This has potentially important consequences on the quantum and deliverability of both the road and housing proposed as part of the Future Chippenham programme that have been raised with Homes England.

A separate consultation by Future Chippenham on potential road route options took place between 15th January 2021 and 12th March 2021 and a preferred route has been identified. During this consultation important feedback was received and informed the recommended road route option. However, in addition it is acknowledged a large representation of responses were received objecting to the scheme on the grounds of quantum, transport issues, climate change and environmental issues.

There is a need for the Future Chippenham programme to respond in an appropriate way to the feedback received during its consultation on the road route options as well as to the Local Planning Authority's consultation on the Local Plan review and the obligations under the GDA.

The benefits of both the funding and the ability to deliver infrastructure led development are clear and remain an important consideration to deliver housing within the county and provide a stimulus for growth and regeneration for our communities within Wiltshire.

The Council leadership requested further consideration be given to these matters and a programme review and assurance exercise has been conducted

and identified some significant risks to the delivery of the whole scheme, in particular:

- The LPR timeline
- The land assembly status and associated risks with GDA conditions
- The feedback from the consultation and concerns raised on the quantum of housing proposed in the Local Plan period.

All of the above impact on the potential ability for the current whole scheme to be delivered on time and in budget. However, the review has identified an opportunity to develop an alternative approach to deliver a significant and important part of the scheme that meets the principal strategic objectives and benefits for the town centre and residents of Chippenham. In addition, the alternative approach supports the delivery of a significant housing requirement but with a reduction in the quantum that aligns with the current Local Plan period and leaves the decision on growth beyond that to a future date.

This scheme proposed is the southern section of the distributor road from the A4 through to the A350 junction at Lackham roundabout that would deliver between an estimated 3,800 – 4,200 new homes and associated infrastructure.

Authority is sought from Cabinet to approve the preferred road route for the southern section of the scheme, subject to; the outcome of the Local Plan review; the revised scheme being approved by Homes England and GDA revisions agreed; continuing with the programme of works to complete the road design and master planning necessary to support the revised programme. It is acknowledged that some of this work is completed at risk due to the current status of the LPR but that it remains funded by the HIF Grant.

Authority is also sought to progress the necessary steps to secure delivery of the road scheme in line with the GDA including land assembly, Compulsory Purchase and the appointment of a delivery/JV partner and for cabinet to agree the principle of reinvestment of Community Infrastructure Levy (CIL) receipts generated from the Future Chippenham development into Chippenham (including the regeneration of the town centre) to support a comprehensive approach to development consistent with the objectives of the masterplan.

Liaison and reporting to Homes England on the programme's delivery plan as part of the GDA will keep HE fully apprised of the current status of the LPR and any associated risks this may have on the FC Programme timeline. Both parties have identified that in order to respond to the LPR and other issues there may be a requirement to review the terms of the GDA.

The report sets out the progress to date on delivery of the first phase of the project and key workstreams and identifies the next steps.

Proposal(s)

Cabinet is asked to,

1. Note the consultation response to the Future Chippenham road route options at Appendix B and to agree the preferred road route as set out in Appendix A subject to the Local Plan review, masterplanning, Homes England agreement and an approved scheme.
2. Agree to enter into contract with landowners to facilitate the road delivery, subject to the Local Plan review, masterplanning, Homes England agreement and the approved scheme, should it proceed substantially on the terms as set out in Appendix C and delegate authority to Director of Housing and Commercial in consultation with the Director of Legal and Governance, to agree any non material amendments to the terms outlined in Appendix C.
3. Agree to initiate masterplanning of the approved scheme including entering into detailed design and planning negotiations with other landowners to achieve a high quality and consistent outcome addressing climate change issues.
4. Agree to implement the compulsory purchase order strategy and receive a further report on progress.
5. Agree to contact Homes England to discuss changes to the Grant Determination Agreement to reflect the southern scheme and associated changes to the delivery plan for the scheme and delegate to the Corporate Director Resources and Deputy Chief Executive in consultation with the Leader authority to enter into the revised contract subject to the Local Plan review, masterplanning, Homes England agreement and an approved scheme.
6. Agree to delegate authority to the Corporate Director Resources and Deputy Chief Executive to make representations and agree for revisions to terms and conditions of the Grant Determination Agreement (GDA) with Homes England following consultation with the relevant Cabinet Member and Director of Legal and Governance, as required during the lifetime of the contract.
7. Note work on Chippenham town centre regeneration and agree the principle of reinvestment of Community Infrastructure Levy (CIL) receipts generated from the Future Chippenham development into Chippenham (including the regeneration of the town centre).

Reason for Proposal(s)

To respond appropriately to feedback from the community to the consultation undertaken by Future Chippenham on the road options and separately by the LPA on the Local Plan review and to continue to meet the terms and conditions of the GDA.

Terence Herbert
Chief Executive

Wiltshire Council

Cabinet

21st July 2021

Subject: Future Chippenham

Cabinet Member: Cllr Richard Clewer, Leader of the Council and Cabinet Member for MCI, Economic Development, Heritage, Arts, Tourism and Health & Wellbeing

Key Decision: Key

1. Purpose of Report

- 1.1 The purpose of this report is to provide an update to members on the progress reached on the Future Chippenham programme, seek a decision on the preferred road route for the distributor road, set out in Appendix A and to inform of the required next steps in the project and ensure appropriate strategies and delegations are in place to ensure smooth and efficient progress.
- 1.2 The report considers the implications of the key consultations undertaken since the programme was last reported to Cabinet including that undertaken by the Local Planning Authority into the Local Plan review (reported to Cabinet on 29th June 2021) and that into the route of the distributor road undertaken by Future Chippenham and detailed in this report.
- 1.3 The Council leadership requested further consideration be given to these matters and a programme review and assurance exercise has been conducted and identified some significant risks to the delivery of the whole scheme, in particular:
 - The LPR timeline
 - The land assembly status and associated risks with GDA conditions
 - The feedback from the consultation and concerns raised on the quantum of housing proposed in the local plan period.
- 1.4 Recent requests from members in relation to the Local Plan review has also further highlighted the importance of a comprehensive strategic approach when allocating new land for housing. It is suggested that those sites that offer the greatest prospects for delivering sustainable new communities and that support integration with existing settlements, encourage walking and cycling and with ready access to local neighbourhood facilities should be favoured over less well-connected alternatives. The rationale for Future Chippenham has already been developed around these principles and time will be given, as requested by members, to do the necessary work to achieve these key objectives.

- 1.5 Authority is sought from Cabinet to approve the preferred road route for the southern section of the scheme, subject to the outcome of the Local Plan Review and the revised scheme being approved with Homes England and GDA revisions agreed, continue with the programme of works to complete the road design and master planning for the revised programme.
- 1.6 In addition, and subject to the preferred route decision, the report seeks approval for the council to enter into the legal agreements to secure the land required to support delivery of the road with 3rd party landowners contained in part 11 of this report.
- 1.7 In support of the land assembly strategy, the report seeks approval to adopt the CPO Strategy contained in Appendix D to allow implementation of the strategy to run alongside the land assembly discussions.
- 1.8 The report seeks approval to commence the framework master plan for Future Chippenham which will include a requirement to conduct a consultation with stakeholders and members of the public later this year.
- 1.9 The report seeks delegated authority for the Corporate Director of Resources in liaison with the leader to:
 - i. on behalf of the Council, make representations and agree for revisions to terms and conditions of the Grant Determination Agreement (GDA) with Homes England following consultation with the relevant Cabinet Member and Director of Legal Services, as required during the lifetime of the contract. An example of this could be a revision of a milestone date that has been delayed due to COVID implications that did not constitute a material change to the deliverables of the programme and breach the terms of the GDA and within the limitation of the current policy and jurisdiction of the Council.

2. Relevance to the Council's Business Plan

- 2.1 The Council's award from HIF directly contributes to all three priorities in the Business Plan
 - growing the economy – the project provides an opportunity to support growth and economic regeneration in the economy by meeting the housing need in a planned and sustainable way. Provision of land within the proposed settlement will create an opportunity for residents to live and work within the communities providing opportunities to reduce out-commuting
 - creating strong communities – as a significant landowner the Council has an opportunity to support infrastructure led development with a comprehensive masterplan that assures housing and social infrastructure is delivered holistically and in a

sustainable way providing enhanced connectivity to the town centre and existing settlement

- protecting the vulnerable – the project provides opportunities through its development to ensure that the holistic approach to development and social infrastructure provides an environment that promotes well-being through enhanced leisure/recreation facilities, affordable housing and promotes the use of blue and green infrastructure.

3. Background

- 3.1 It has been known for some time that development in and around Chippenham is constrained. Housing delivery is below the number that is needed to keep pace with demand resulting in house price inflation exceeding the national average and a corresponding undersupply of affordable housing.
- 3.2 The lack of infrastructure has been recognised as a major impediment to bringing forward the homes needed to meet the future needs of Chippenham in a sustainable way as required by national planning policy. Indeed, this was concluded by both the Inspector into the Chippenham Housing Allocations DPD and reflected in the published evidence of the Local Plan review. Both conclude that a connection from the A4 and the A350 is essential to the long-term growth future of the town; and safeguarding measures were made within the Allocations DPD to allow for future connections to be made. All growth measures which do not deliver this road, no matter what the scale, raise the very strong prospect of significant traffic congestion in and around the town centre and would therefore potentially fail tests of planning soundness as it would exacerbate rather than solve traffic problems.
- 3.3 Without the provision of up-front infrastructure, development will occur, but in a speculative and piecemeal fashion which owing to viability issues, may not deliver the wider benefits such as education, health, infrastructure, green energy and affordable homes in accordance with the Council's policy requirements. The Council will in effect be at risk of losing control over the key land use decision for the town and become reactive rather than proactive.
- 3.4 To address this the Council sought Housing Infrastructure Fund funding for up-front infrastructure delivery. This funding provides for essential infrastructure in the form of a new distributor road, to be delivered up-front which in turn will support the delivery of the new housing required and the provision of affordable housing at the level required by the Council's policies.
- 3.5 Through the payment of Community Infrastructure Levy receipts from the delivery of the new homes the HIF funding will help unlock funds to deliver new social and community infrastructure (schools, leisure provision, open space etc) both to support the new development within the Future

Chippenham area and the wider town for the benefit of the whole Chippenham community.

- 3.6 In November 2019, the Ministry of Housing Communities and Local Government confirmed that the bid submitted by the Council had been successful. In December 2020, the Council entered into a Grant Determination Agreement (GDA) defining the terms of the funding and ongoing commitments on delivery of infrastructure and housing.

4. Main considerations for the Council

- 4.1 The main considerations for the Council arising from this report are as follows:

- To take account of the implications of the Local Plan review and Cabinet's decision in relation to the recommendations put forward by the LPA on 29th June 2021.
- The feedback from the consultation by Future Chippenham on possible road route options and the recommendation of the preferred route identified.
- The proposal to progress masterplanning, land assembly, a CPO strategy and the procurement of a Joint Venture delivery partner – subject to the Local Planning Authority bringing forward the Future Chippenham sites within its Local Plan review.
- The opportunities for the Future Chippenham Programme to support the delivery of social and community infrastructure and wider economic benefits to the community of Chippenham (including the regeneration of the town centre) through a partnership approach with local stakeholders and the targeted application of Community Infrastructure Levy (CIL).
- Authority is required to continue to engage with Homes England and to make any necessary revisions to the Grant Determination Agreement to facilitate the changes to deliver the southern road route scheme and allow the approved programme to proceed.

- 4.2 The report deals with these issues under relevant headings below.

Implications arising from the Local Plan Review.

- 4.3 On 29th June 2021 a report was taken to Cabinet updating on the consultation undertaken on the Local Plan review (LPR) between January and March 2021.
- 4.4 This report highlighted feedback from communities across Wiltshire including those in Chippenham where it was noted that there was a significant objection from the local community to the scale of growth on a variety of grounds. The most common being environmental harm, traffic congestion, lack of justification and undermining tackling the climate emergency. It also noted that there were considerable objections to the new road proposals.

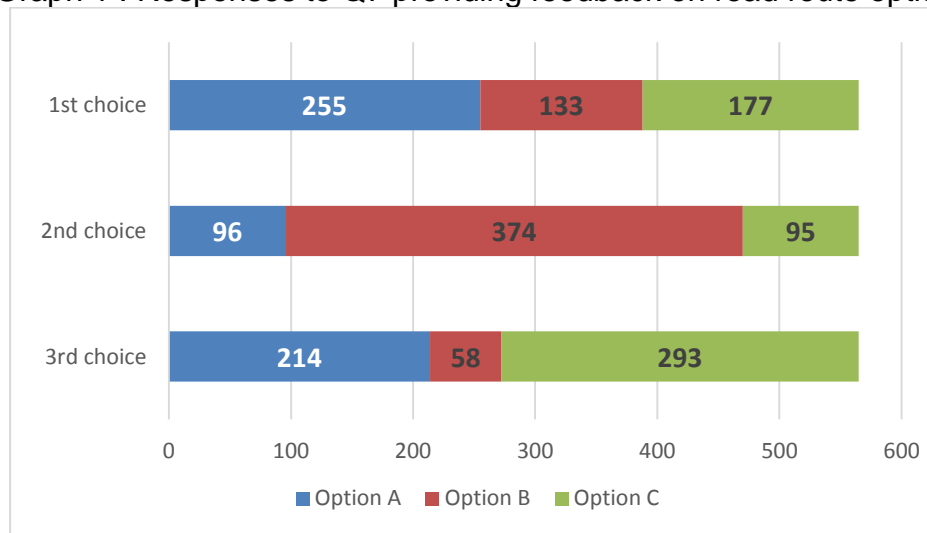
- 4.5 Cabinet agreed that further work be undertaken on the LPR in response to the consultation on key parts of the evidence base including testing the upper and lower levels and spatial distribution of the range of housing need for the plan period. It also agreed that reviews be undertaken in relation to employment need and the potential for renewable energy, zero carbon development and off-grid energy networks.
- 4.6 The feedback from this consultation and the decision by Cabinet to review the evidence base in this way has potential impacts on the Future Chippenham programme. The immediate implications include continued uncertainty over the quantum of housing that will be required within this Local Plan period and by association the potential opportunities to review the delivery strategy for the programme.
- 4.7 These are not questions that can be answered immediately and are ones that will be informed by the review of the evidence base to be undertaken by the LPA, the reporting timescales for which are not currently known. It is noted, however, that members have highlighted the importance of a comprehensive strategic approach when allocating new land for housing. Those sites that offer the greatest prospects for delivering sustainable new communities and that support integration with existing settlements, encourage walking and cycling and with ready access to local neighbourhood facilities should be favoured over less well-connected alternatives. The rationale for Future Chippenham has already been developed around these principles and time will be given, as requested by members, to do the necessary work to achieve these key objectives
- 4.8 The short-term implications for the Future Chippenham programme are that, whilst the justification for an infrastructure led scheme based around a holistic masterplan approach remain as compelling as before, the impact of any further delays in the LPR affect the deliverability of the current HIF scheme and therefore the Future Chippenham team have identified opportunities that could address a number of factors that include delivery timetable, scale of development and benefits delivery through delivery of the southern section of the scheme.
- 4.9 This has implications with regard to the obligations of the Council to Homes England under the GDA which have been raised with them. The parties are working constructively together to respond to the situation as it evolves.

Consultation on the proposed site(s) and identification of the preferred road route option

- 4.10 Consultation on the proposed site(s) and HIF road route options was originally planned in April 2020. However due to the impacts of the COVID-19 restrictions this commenced on 15th January 2021 and concluded on 12th March 2021.

- 4.11 The consultation ran broadly in parallel to that of the Local Plan review (Reg 18). This was unavoidable as this was the latest date the Future Chippenham consultation could take place to achieve the requirements of the GDA. The consultation centred on the road route options and the preferred site identified in the recently published Local Plan review Reg 18 documents to provide context.
- 4.12 Due to COVID-19 restrictions the consultation took place mainly online, in accordance with the Council’s adopted Temporary Arrangements supplement to the Statement of Community Involvement. The consultation took place over eight weeks and received 1,163 responses by email, letter and via the online consultation form.
- 4.13 In addition, over 800 questions were received by the project team during the process of the consultation, and answers were provided. 3 webinars, 9 public meetings, including Area Board meetings, Town and Parish Council meetings, consultation meetings with tenants and landowner all took place in the consultation period.
- 4.14 A total of 565 respondents provided feedback to Question 7 of the consultation feedback form, which asked respondents to rank the three road route options in order of preference. Of those who gave an answer to this question, Option A (the outer route) received the highest number of first choice selections (45%). Option B (the middle route) received the lowest number of first choice selections (24%) but conversely received by far the most second choice selections (66%). Option C (the inner route) received fewer first choice selections than Option A (31%) but a much larger number of third choice selections (52%).

Graph 1 : Responses to Q7 providing feedback on road route options



- 4.15 All responses received have been reviewed and informed the recommendation on the preferred road route option. Where comments were received that were not directly related to the road route options

consultation, these were also analysed, and officer responses provided on how they will feed into the next stages of the programme's development.

- 4.16 A consultation report which provides detail of the nature of the responses is attached. Cabinet should note:
- A significant number of representations were made by members of the public in opposition to the road infrastructure and associated quantum of housing.
 - Concerns were raised around climate change impacts, environmental impact, transport impacts amongst many others.
 - Considerable feedback was received to inform the preparation of a Framework Masterplan for the site.
 - All directly affected landowners provided feedback into the consultation exercise and has also been included in the report. Representations were received from members of the public from Chippenham and the surrounding areas, statutory stakeholders, interested parties and community groups.
- 4.17 The analysis did not produce a clear-cut preference for any one of the three routes, but instead the best fit/preferred option comprises a hybrid route alignment that takes account of the consultation feedback and which has the following attributes;
- Good and best fit with the strategic scheme objectives including connectivity and congestion mitigation.
 - Coordinates with land developer preferences, including the most suitable location to connect sustainable transport networks with the town.
 - Reasonable level of deliverability, subject to formal land agreements.
 - Lowest overall environmental impact in majority of assessment zones and potential for mitigation where impacts are identified

4.18 In recognition of the revised scheme proposed above, the recommendation for the preferred road route is for the southern route only subject to the Local Plan review, master planning and Homes England agreement. Whilst feedback on the northern route has been received, this route has been excluded.

4.19 Further survey work will be undertaken and consultation on the Framework Masterplan and information gathered in those exercises will also help to inform the finalised design and route. Subject to the Local Plan review status subsequent planning applications can be made.

Land Assembly for delivery of the HIF works

4.20 The Council has continued to progress the land assembly works to secure the land required to deliver the road. Negotiations with third party landowners have progressed well, and Heads of Terms have been discussed on the anticipated road route and lawyers have been instructed

with all the landowners in the southern sector (from the Lackham roundabout vicinity to the A4 East) although there are some outstanding issues which should not prove insurmountable. It is anticipated that contracts with those landowners ensuring delivery of the land required to deliver the road will be able to be completed (subject to agreement by Cabinet). Heads of Terms have been agreed in principle with landowners in the North, Chippenham 2020 and Summix, although some issues are still outstanding and are contained in Part II as they contain exempt information under schedule 12A of the Local Government Act 1972 (Information relating to the financial or business affairs of any particular person (including the authority holding that information)). Approval to enter into the legal agreements to secure the land required to support delivery of the road with 3rd party landowners contained in Part II of this report is sought.

- 4.21 A summary of those terms is contained in Part II of this report as they contain exempt information under schedule 12A of the Local Government Act 1972 (Information relating to the financial or business affairs of any person (including the authority holding that information)).
- 4.22 If acquisition by private agreement cannot be achieved, a Compulsory Purchase Order (CPO) will be necessary to acquire the remaining land. A CPO will also mitigate against any temptation for last minute renegotiation by any of the landowners, north or south, and is standard practice in similar schemes such to this.

Compulsory Purchase Order Strategy

- 4.24 Heads of Terms have been agreed with the principal landowners and Legal Services are in the process of negotiating the legal documentation required to secure acquisition of the freehold interest in land required for the road and associated infrastructure.
- 4.25 Whilst there appears to be goodwill on the part of all parties to progress to the necessary agreements, there is nonetheless a risk to the programme on land assembly until all the necessary interests required to deliver the road have been secured.
- 4.26 On schemes of this scale and nature it is recommended that land assembly negotiations be backed up with a compulsory purchase process to ensure that where agreement cannot be reached for whatever reason, the Council has the ability to acquire the interests required by compulsion as a last resort.
- 4.27 On identification of the route for the distributor road, the Council will therefore need to implement a CPO strategy to ensure that should CPO be required appropriate legal compliance can be satisfied.
- 4.28 To this end it is proposed that in line with Cabinet's Decision on 8th October 2019 (which provided that where necessary the Council will use its compulsory purchase powers in order to ensure that the infrastructure

site is made available for the delivery of the road) that Cabinet provide authority for the Future Chippenham Programme to appoint specialists to commence the necessary work to support a compulsory purchase process.

- 4.29 On the basis that Members support the principle of proceeding with the CPO Strategy, then a full report will be submitted to Cabinet towards the end of this year.

Framework Masterplanning

- 4.30 The benefits of taking an holistic masterplanning approach are explained in para 3.4 above. A Concept Framework for Future Chippenham was developed by the Council as landowner to both inform the Options Assessment Report process and begin the master planning for the Future Chippenham sites. This has been updated following the information and feedback received during the consultation of the road route options and engagement with stakeholders over the last 12 months.
- 4.31 Approval is sought to undertake a Framework Masterplan for the southern scheme which will provide the detailed context to support the preferred road route and housing delivery for the site. This will also be further informed by continued engagement with statutory consultees.
- 4.32 A public consultation on the masterplan will follow in the Autumn where the framework masterplan for the site will be consulted on. The consultation programme will be provided in due course and adhere to the Council's Statement of Community Involvement together with the Statement of Community Involvement Temporary Arrangements 2020 which have been put in place in light of the COVID-19 pandemic and the Future Chippenham Stakeholder and Community Engagement Strategy.

Delivery Partner

- 4.33 Working with its appointed commercial advisors Avison Young, the Council is engaging in initial and informal 'soft market testing' which involves informal conversations with potential partners to understand their appetite to collaborate with the Council in delivering housing and the best route to present the opportunity to the market. The initial findings from this exercise indicate a keen interest in Future Chippenham from the market and an understanding of the opportunities and challenges.
- 4.34 The conclusions from soft market testing will be provided to Cabinet in an update report, prior to the Council working with its advisory team to produce procurement documentation and proceed with formal steps to procure a delivery partner in line with relevant contracts guidance and regulations.

Town centre regeneration

- 4.35 The link between the Future Chippenham programme and the importance of ensuring that the new homes it delivers are properly and effectively integrated with the existing communities has been acknowledged from the outset. An important aspect of this is the way in which the programme serves to support the long-term vitality and viability of the existing town centre through a coordinated approach to regeneration that acknowledges the need to plan holistically for the economic, social and community infrastructure that the new development will support in locations that best serve the whole of the Chippenham community in the most economic and sustainable way.
- 4.36 Future Chippenham development will provide an opportunity for a significant investment of CIL, some of which can be utilised to invest into the town centre regeneration, as already agreed with the Town Council and publicly stated in the local press by the previous Leader of the Council. The reduction in the scale of the scheme will directly impact on this level of investment available.
- 4.37 Wiltshire Council has important landholdings in Chippenham town centre and discussions on how the Future Chippenham programme can support town centre regeneration have been part of the regular discussions during meetings with the Town Council and have formed part of the early stakeholder discussions with the business community as part of the round table discussions on the masterplan.
- 4.38 These opportunities now need to be progressed in a more detailed way in consultation and partnership with a wider group of stakeholders and the potential explored to establish a group/forum managed independently from the Council that could develop and implement a town centre regeneration strategy for Chippenham. This group would be likely to include Wiltshire Council, Chippenham Town Council, local business representatives (including the Chamber of Commerce) and other relevant community groups and stakeholders with an interest in the economic success and quality of the environment of the town. This may be convened and chaired by the local MP and serve as the forum for assessing the plans and prioritising investment that would arise through CIL receipts from the new housing development.
- 4.39 A possible model for this is the Salisbury Place Board that was convened in response to the nerve agent attack in Salisbury and that developed the now adopted Central Area Framework for the city.

GDA revisions

- 4.40 The GDA outlines key milestones and post contract conditions the Council is required to meet as part of the agreement. From time to time it may be necessary to vary these dates and conditions due to programme timeline changes and potential variations in deliverables that are outside of the control of the project. An example of this would be a delay in meeting a milestone due to slippage in the project and a request to Homes England would be made to move the milestone linked to a piece of work that is delayed.

- 4.41 Delegated authority is sought to make representations to Homes England to seek agreement to deliver the southern scheme and make the required amendments to the GDA including the milestones and post contract conditions, required to keep the programme on track for delivery and to adhere to the overarching commitments within the GDA.

5. Overview and Scrutiny Engagement

- 5.1 The Chairman and Vice-Chairman of the Environment Select Committee will be briefed prior to the cabinet meeting.

6. Safeguarding Implications

- 6.1 There are no safeguarding implications at this stage

7. Public Health Implications

- 7.1 No public health implications arise at this stage

8. Procurement Implications

- 8.1 All procurement associated with the project will take place within the Council's procurement and commercial strategy and in conjunction with the Council's procurement team.

9. Equalities Impact of the Proposal

- 9.1 There are no direct equality impacts from this report however there is an ongoing obligation of Cabinet as the relevant decision maker to keep the impacts that may arise under review. This is being managed by keeping the Equalities Impact Assessment under review and at all stages including consultation ensuring that any identified impacts are considered and appropriately dealt with.

10. Environmental and Climate Change Considerations

- 10.1 Environment and Climate Change Considerations will always be kept to the fore in accordance with the Council's adopted position of declaring a climate emergency. As this report is an update report with requests for approval to allow the project to progress there are no direct environment or climate change considerations to be made at this stage. The terms of the GDA will require the Council to have full regard to all relevant environmental and climate change legislation and requirements in the Local Plan process as the project progresses. The project is cognisant that local planning policy may have requirements on how any development takes place and will, where required, comply with these.

11. Risks that may arise if the proposed decision and related work is not taken

- 11.1 Inability to adhere to the existing GDA terms and conditions resulting in fundamental or general default.

Risks that may arise if the proposed decision is taken and actions that will be taken to manage these risks

- 11.2 There are risks around delivering on the Council's commitment in the GDA, which are mitigated in the project specific terms and conditions pertaining to delivery of the milestones within the agreement. These include robust governance, monitoring and reporting standards which meet government's and the Council's risk management requirements.
- 11.3 There is a risk that the Local Plan review process does not seek to allocate the project site for development and as such planning consent is not achieved for the infrastructure works. In that event, the GDA caters for this as a general default and the HIF funding drawn down by the Council would not need to be repaid, provided that the Council had used best endeavours to secure such allocation and planning permission.

12. Financial Implications

- 12.1 Land Assembly – cost relating to the transaction for land required for the road from 3rd party landowners is provided for in the current programme budget and where this exceeds the allowance, a contingency budget is available to support this. Estimated budget, including additional land acquisition as part of the scheme and fees, is subject to negotiation. It should be noted that if development does take place the majority of these costs are recoverable.
- 12.2 CPO Strategy – the implementation of the CPO Strategy up to and including the CPO application is provided for in the current programme budget. However, the CPO inquiry and subsequent potential compensation is not included, and provision would need to be made from the contingency budget for this which could include provision from land receipts from Council owned land.
- 12.3 Failure to meet draw down conditions will require the Council to fund the programme at risk until conditions and milestones dates can be resolved.
- 12.4 In addition to the delivery costs of the road, further road enhancements already identified as part of the original scheme and delivered through CIL will also be required.
- 12.5 A revised recovery strategy will be required, subject to agreement by Homes England and subsequent cabinet approval.
- 12.6 Delays on delivery of the scheme have a direct impact on inflation costs for the delivery of the infrastructure and housing.

- 12.7 Subject to approval, discussion would commence with Homes England around the amendments to the existing Grant Determination Agreement. To date grant has been drawn down to fund costs incurred on the development of the programme, approximately £4m to date. In addition, further works will be commissioned to progress the programme in line with the approvals in this report that would be earmarked to be funded from the grant.
- 12.8 It should be noted that in the scenario where the negotiations with Homes England are not successful there is a risk that the grant used to cover the costs incurred, and an element of those commissioned, could potentially have to be repaid back to Government. In addition, if that then resulted in the road not proceeding in any form, the capital cost to the Council would then have to be met from revenue sources, representing a pressure in the financial year that decision was then made.

13. Legal Implications (Please see Part II of the report for additional Legal comments)

- 13.1 The determination of the route for the distributor road is one step in the progress of this project. It will allow the project team to consult on the masterplan for the wider development with the detail of where the likely distributor will be if the development goes forward.
- 13.2 It will allow additional work to be done to inform any planning application for the road should it be required.
- 13.3 The Council has undertaken consultation to ensure public participation in the local authority's decision making process. In undertaking a consultation process, the Council is required to adhere to the following 'Gunning' principles:
- (i) consultation must take place when the proposal is still at a formative stage;*
 - (ii) sufficient reasons must be put forward for the proposal to allow for intelligent consideration and response;*
 - (iii) adequate time must be given for consideration and response; and*
 - (iv) the product of consultation must be conscientiously taken into account.*
- 13.4 The consultation process was undertaken at an early stage and provided consultees with appropriate information and enough to provide comment. A number of submissions have been received and a consultation report has been prepared to assist Cabinet to have regard to those comments when making their decision. The full consultation responses are provided as background documents.
- 13.5 A significant number of representations expressed a fundamental opposition to the development of the road and/or the development proposals themselves. A number cited either the climate emergency, the changing patterns of working due to the pandemic and/or opposition to

housing generally or in the areas proposed. These are factors that will need to be considered and most properly in the Local Plan development.

- 13.6 However, they also have to be balanced against the other public interest needs that have been identified including the need for housing and ensuring a ready supply of affordable housing and the public benefits of having a planned development which takes into account climate change needs, well planned and developed infrastructure and sustainable living.
- 13.7 A consultation is not a referendum. When making its decision, Cabinet must give conscientious consideration to the response to the consultation in accordance with the leading case law. Most notably, R (on the applicant of Mosley) (in substitution of Stirling (Deceased)) (AP) v London Borough of Haringey [2014] UKSC 56 states:

[...]

38. Such wide-ranging consultation, in respect of the exercise of a local authority's exercise of a general power in relation to finance, is far removed in context and scope from the situations in which the common law has recognised a duty of procedural fairness. The purpose of public consultation in that context is in my opinion not to ensure procedural fairness in the treatment of persons whose legally protected interests may be adversely affected, as the common law seeks to do. The purpose of this particular statutory duty to consult must, in my opinion, be to ensure public participation in the local authority's decision-making process.

39. In order for the consultation to achieve that objective, it must fulfil certain minimum requirements. Meaningful public participation in this particular decision-making process, in a context with which the general public cannot be expected to be familiar, requires that the consultees should be provided not only with information about the draft scheme, but also with an outline of the realistic alternatives, and an indication of the main reasons for the authority's adoption of the draft scheme. That follows, in this context, from the general obligation to let consultees know "what the proposal is and exactly why it is under positive consideration, telling them enough (which may be a good deal) to enable them to make an intelligent response": R v North and East Devon Health Authority, Ex p Coughlan [2001] QB 213, para 112, per Lord Woolf MR.

[...]

- 13.8 Based on the information provided within this report and background documents a decision by Cabinet to identify a route which a distributor road would take should the development occur would be a legally justifiable decision open to Cabinet.
- 13.9 Section 226 of the Town and Country Planning Act 1990 (TCPA 1990) authorises local authorities to compulsorily purchase land if the authority thinks that the acquisition will facilitate the development, redevelopment or improvement of land, or acquisition is required in order to achieve the proper planning of an area:

- (1) *A local authority to whom this section applies shall, on being authorised to do so by the Secretary of State, have power to acquire compulsorily any land in their area . . .—*
- (a) *if the authority think that the acquisition will facilitate the carrying out of development, re-development or improvement on or in relation to the land, or*
- (b) *which is required for a purpose which it is necessary to achieve in the interests of the proper planning of an area in which the land is situated.*
- (1A) *But a local authority must not exercise the power under paragraph (a) of subsection (1) unless they think that the development, re-development or improvement is likely to contribute to the achievement of any one or more of the following objects—*
 - (a) *the promotion or improvement of the economic well-being of their area;*
 - (b) *the promotion or improvement of the social well-being of their area;*
 - (c) *the promotion or improvement of the environmental well-being of their area.*

13.10 In order to exercise the s.226(1)(a) powers the local authority must be satisfied that the proposed development/improvement is likely to contribute towards any of the following objectives, namely the promotion or improvement of the economic, social or environmental well-being of their area.

13.11 Under section 227 of the Town and Country Planning Act 1990 the Council has the power to acquire by agreement any land which they require for any purpose for which a local authority may be authorised to acquire land under section 226 as aforementioned.

13.12 The approval of a CPO Strategy as proposed will allow the project to ensure that running alongside the negotiations with 3rd party landowners all steps required to utilise CPO powers, if necessary, are taken in a timely fashion and to meet legal compliance.

13.13 Achieving agreed landowner agreements is the preferred methodology for the delivery of the road should it be required and all negotiations and discussions and drawing up of the legal documentation is being taken in conjunction with Wiltshire Council Legal Services.

13.14 Close ongoing monitoring of the terms of the GDA is required to ensure compliance with the terms and the milestones and any changes must be requested in advance to avoid general or fundamental default of the GDA.

13.15 Homes England is under no obligation to agree changes to the GDA. The risk is that any requested changes are not agreed and the Council will ultimately end up in general and/or fundamental default. Decisions made relating to and following consideration of this Report may trigger a requirement under the GDA to “inform” Homes England “immediately”. A failure to do so may result in a general or fundamental default of the GDA, therefore this should be managed accordingly.

14 Workforce Implications

- 14.1 No further workforce implications are reported at this time internally.
- 14.2 All options recommended in this report align to the Grant Determination Agreement and previous representations to cabinet and therefore no change in the options is being considered at this stage.

15 Conclusions

- 15.1 To respond appropriately to feedback from the community to the consultation undertaken by Future Chippenham on the road options and separately by the LPA on the Local Plan review and to continue to meet the terms and conditions of the GDA it is recommended that Cabinet agree to and approve the steps set out in the Proposals in this report.

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Appendices

- A: Future Chippenham Road route preferred option officer report
- B: Future Chippenham Road route option consultation report
- C: Heads of Terms (Part II)
- D: CPO Strategy (public version)