

**Committee: Cabinet**

**Date of meeting: 27 August 2020**

**Title of Report: Carlisle Southern Link Road - Land Acquisition, Compulsory Purchase Order and Side Roads Order**

**Report by: Angela Jones, Executive Director Economy and Infrastructure**

**Cabinet Member: Councillor Keith Little, Portfolio Holder for Highways and Transport**

## **1 What is the Report About? (Executive Summary)**

- 1.1 The report seeks approval for the acquisition of land and new rights over land by agreement and the making and, if confirmed, implementation of a Compulsory Purchase Order (CPO) and a Side Roads Order (SRO) in order to construct the Carlisle Southern Link Road (CSLR) in order to unlock St Cuthbert's Garden Village (SCGV), improve the strategic highway network and address local transport issues.
- 1.2 There is a need to progress the CSLR scheme in a timely way to enable delivery of the CSLR to unlock SCGV in order to comply with the obligations of the Grant Determination Agreement (GDA) that the Council has entered into with Homes England. On the basis that the exercise of the Council's powers of compulsory purchase (if authorised by the Secretary of State's confirmation of the CPO) would be used to acquire land only where acquisition by agreement is not possible within the requisite timescales, Cabinet is recommended to approve that the Council makes a CPO and SRO for the CSLR as the most appropriate way of ensuring this critical infrastructure scheme can be delivered at the earliest opportunity.

## **2 Recommendation of the Executive Director**

It is recommended that Cabinet agrees to:

- (1) Authorise the Executive Director, Economy and Infrastructure (or in her absence the Chief Executive) in consultation with the Leader and Portfolio Holder for Highways and Transport, to take all appropriate actions necessary for the purpose of negotiating the terms and conditions to acquire by agreement the land and new rights over land which are needed to allow the construction, operation and maintenance of the CSLR.
- (2) Authorise the making of a Compulsory Purchase Order (or Orders) pursuant to Sections 239, 240, 246, 249, 250 and 260 of the Highways Act 1980 and all other enabling powers, to be known as "The Cumbria County Council (Carlisle Southern Link Road) Compulsory Purchase Order 2020", a draft of which is at Appendix 1, for the compulsory purchase of land and

rights required for the CSLR within the area shown on the draft Order Map (also at Appendix 1).

- (3) Authorise the making of a Side Roads Order (or Orders) pursuant to Sections 6, 14 and 125 of the Highways Act 1980 and all other enabling powers, to be known as "The Cumbria County Council (A689 (Carlisle Southern Link Road) Classified Road) (Side Roads and Other Works) Order 2020" to improve or stop up existing highways, to construct new highways and to stop up and provide replacement private means of access as required to deliver the CSLR (subject to the Council entering into an agreement with Highways England under section 6 of the Highways Act 1980); a draft of the Side Roads Order is at Appendix 2.
- (4) Authorise the Executive Director - Economy and Infrastructure (or in her absence the Chief Executive) to take all appropriate actions necessary for making any amendments or modifications, including updates or corrections to the draft CSLR CPO and SRO (at Appendices 1 and 2) should these be necessary and for finalising and making the CSLR CPO and SRO (such amendments or modifications do not include additions to the proposed area of land take under the CPO).
- (5) Authorise the Executive Director - Economy and Infrastructure (or in her absence the Chief Executive) to take all necessary action to secure the making, submission to the Secretary of State for confirmation, and (if confirmed) implementation of the CSLR CPO and SRO, including the publication and service of all requisite notices on relevant parties and the negotiation and completion of any necessary agreements and undertakings in order to secure the removal of objections to the CPO and/or SRO (where such agreements or undertakings are appropriate), and to secure the presentation of the Council's case at any Public Inquiry.
- (6) Subject to confirmation of the CSLR CPO and SRO, authorise the Chief Legal Officer to take all necessary action to implement the CSLR CPO and SRO and to acquire all land, interests in land and/or new rights over the CPO land and/or possession of the CPO land as necessary, including the service of Notices to Treat and Notices of Entry, or as the case may be, the execution of General Vesting Declarations.
- (7) Authorise, in the event that any question of compensation is referred to the Upper Tribunal (Lands Chamber) the Executive Director – Economy and Infrastructure (or in her absence the Chief Executive), in consultation with the Chief Legal Officer, to take all necessary steps in connection with the conduct and, if appropriate, settlement of such proceedings.
- (8) Authorise the Executive Director - Economy and Infrastructure to seek to acquire the land and rights (or to extinguish rights) required for the CSLR Scheme by agreement and to take all necessary steps to enable the negotiation of and entering into the agreements necessary to complete such acquisitions.

- (9) Authorise the Executive Director - Economy and Infrastructure to take all necessary steps to enable the negotiation and approval of the payment of relevant and reasonable professional fees incurred by landowners and others with compensatable interests in taking professional advice in connection with the acquisition of their interests required for the CSLR and related compensation claims and also in advancing the development or implementation of the CSLR.
- (10) Approve the additional contributions of £138.018m (£136.957m to the Capital Programme 2020/21 – 2024/25 and £1.061m to 2025/26), following approval of the CSLR GDA at its meeting on the 23rd July 2020, and the signing of the GDA on 31st July 2020.

### **3 Background to the Proposals**

- 3.1 Carlisle is the only city within Cumbria and the wider Borderlands region. Its future economic prosperity, and that of the wider region, is dependent on growing the population. However, the current growth of Carlisle is constrained by the existing infrastructure. Carlisle City Council through the Local Plan have targeted an ambitious level of growth and has allocated the area to the south of Carlisle for housing-led growth. This strategic residential allocation is now known as St Cuthbert's Garden Village (SCGV) and is included within the Government's Garden Towns programme.
- 3.2 Through the Local Plan process, it was identified that the CSLR was necessary to unlock development of SCGV. This provided the basis for the submission of a proposal to MHCLG's Housing Infrastructure Fund (HIF) and the subsequent funding award in 2019. In July 2020, the Council entered into a GDA with Homes England (on behalf of MHCLG) and Carlisle City Council and agreed to deliver the CSLR in order to unlock the delivery of 10,000 new homes.
- 3.3 The GDA includes a series of milestones for delivery of the CSLR that requires the construction to start in 2022 and for the CSLR to be completed by May 2024, with the HIF grant to be spent before the longstop date of March 2024.
- 3.4 In line with the GDA, the Council is required to assemble all the land necessary for the construction and delivery of the CSLR by March 2022. In order to achieve this, the Council needs to make a CPO to ensure all the land and new rights over land which are required for the CSLR scheme can be acquired compulsorily in the event that the land and new rights cannot be acquired through negotiation and agreement within the requisite timescales.
- 3.5 The CPO is to be known as "The Cumbria County Council (Carlisle Southern Link Road) Compulsory Purchase Order 2020", a draft of which is in Appendix 1. The CPO is to be made under the following enabling provisions in the Highways Act 1980:
  - Section 239 (to construct new highways and improve existing highways and to improve frontages to a highway or adjoining and adjacent land)

- Section 240 (to carry out works authorised by a SRO, to create new means of access to premises, to use land in connection with the construction and improvement of highways, the use of land for working space and provision of access to a working site and for the diversion of non-navigable watercourses)
- Section 246 (to mitigate the adverse effect of the existence or use of the highways proposed to be constructed or improved on their surroundings)
- Section 249 (application of the distance limits for compulsory acquisition)
- Section 250 (to create and compulsorily acquire new rights)
- Section 260 (to override the effects of restrictive covenants or other third party right over land, where land included in the CPO has been acquired by agreement by the Council)

3.6 In addition to the CPO, the scheme design for CSLR also has implications for the existing highways and side roads and requires the making of a Side Roads Order (SRO). The CSLR SRO needs to be made to authorise the stopping up, alteration, creation and improvement of highways which will connect with the new classified road to be delivered as part of the CSLR scheme, and also to authorise the construction of new highways, the stopping up of private means of access to premises, the provision of new private means of access to premises and other associated works, including alterations to Public Rights of Way. Details of these changes are shown on the draft SRO plans in Appendix 2.

3.7 Once the CPO and SRO (the Orders) are made by the Council, they will then be publicised in accordance with the legislation. In the event that objections are received in relation to one or both of the Orders, it is likely that the Secretary of State for Transport will require a public local inquiry to be held so that the Orders and any objections to them can be considered by an Inspector. Either the Inspector or the Secretary of State for Transport will make the final determination upon whether or not to confirm the Orders (and if to confirm the Orders, whether with or without modifications).

3.8 The confirmation of the CPO is dependent on the Council demonstrating the following:

- a) there is a clear **need for the CSLR scheme**;
- b) **alternative options** have been considered (including alternatives to the CSLR scheme as now proposed, and alternatives to the compulsory acquisition of land);
- c) a compelling case in the **public interest** (where the public benefits to which the CSLR scheme would give rise outweigh the private losses that would be suffered if the CSLR scheme was delivered);
- d) there is clarity and certainty on the **funding** and viability for the CSLR scheme;
- e) CPO powers would be used as a **last resort**, where the Council's efforts to seek to acquire land or rights over land by agreement are ultimately unsuccessful;
- f) **planning permission** for the CSLR scheme is or can be secured;

- g) **human rights and equalities** impacts have been considered and the impact of the CSLR scheme on persons affected by it is lawful, justified and proportionate, and the private losses suffered by such persons would, on balance, be outweighed by the benefits that the CSLR scheme would deliver;
- h) the presence of any **special category land** does not constitute an impediment to the implementation of the CSLR scheme; and
- i) all **other relevant matters** in the CPO guidance have been are complied with by the Council.

3.9 A detailed Statement of Reasons (a draft of which is attached at Appendix 3) has been prepared in support of the CPO (and SRO) addressing all these considerations. This document sets out the compelling case in the public interest for the making and confirmation of the CSLR CPO and SRO in the circumstances of this case. The need case for the CSLR is summarised in paragraphs 3.10 to 3.12 below.

### **Need for the Scheme**

3.10 The need case for the CSLR scheme is focussed on unlocking SCGV. The Carlisle District Local Plan seeks to deliver a step change in the character and perception of Carlisle with an ambitious approach to housing delivery with SCGV being central to this approach. SCGV provides a long term growth site for Carlisle for delivery of up to 10,325 new homes over the next 20-30 years together with new employment, community, retail, and education facilities.

3.11 To support this level of growth, a major infrastructure upgrade is essential with the CSLR providing a high quality link between the M6 Junction 42 and the A595. The CSLR would provide the increase in road capacity critical to unlocking and accelerating such large-scale housing and associated growth. The route would also provide opportunities for walking, cycling, and public transport which are important aspects of the SCGV place-making 'vision'.

3.12 In addition to enabling SCGV, the CSLR scheme would also support the delivery of two other objectives which the CSLR scheme is designed to address:

i. **Improving the strategic highway network** - the CSLR scheme would also improve access to West Cumbria and the North East by providing a high-quality east-west link between the A595, which serves the Port of Workington and Sellafield, Carlisle and the A69 through to Newcastle-upon-Tyne. The CSLR scheme would therefore significantly improve access for businesses and employees and would help to maximise the economic benefit to the county of Cumbria.

ii. **Addressing local transport issues** - there are a number of issues with the existing road network on the southern approaches to Carlisle. In particular, the A6 London Road suffers congestion at busy times of the day. Any future growth of the city, including the SCGV development, will make congestion worse and increase journey times, without the CSLR scheme. The city only has two existing crossings of the River Caldew, and so any disruption to either of these routes can create severe congestion problems. By providing a further

crossing of the River Caldew, the CSLR scheme would address both of these issues.

### **Alternative Options**

- 3.13 As part of the development of the Carlisle District Local Plan an assessment was undertaken to identify strategic infrastructure solutions capable of meeting the growth objectives of the Local Plan, and specifically meeting objectives related to the proposed housing development to the south of Carlisle. This assessment included the consideration of a number of alternative options, including on-line highway capacity improvements, sustainable transport improvements, park and ride, light rail and a new road scheme. This assessment was carried out in accordance with DfT's Transport Analysis Guidance (TAG) and concluded that a new road was the best way forward.
- 3.14 Having identified a new road scheme as the best way of meeting the scheme objectives, the next stage of scheme development considered five potential route options for the road scheme, including a blue route, green route and orange route within a wide 'corridor' to the south of Carlisle. The selection of the preferred route (the current CSLR scheme and which was based on the green route) was completed following significant development and assessment work, including stakeholder and public consultations and input. It was clear from this comprehensive options appraisal process that none of the alternative solutions would be capable of achieving the identified scheme objectives and delivering the resultant benefits better than, or on an equivalent basis to, the CSLR scheme.
- 3.15 The Council therefore selected the green route as the preferred route in June 2018, following which the CSLR Scheme then entered the preliminary design phase whereby the road was developed to a sufficient level of detail to allow the submission of a planning application (in October 2019).
- 3.16 As noted above, the Council considers that compulsory purchase powers will be necessary to enable the assembly of the land required for the CSLR Scheme, thereby facilitating delivery of the CSLR Scheme within the requisite timescale. Given that the acquisition of third party land is fundamental to the successful delivery of the Scheme, the Council also concluded that there is no reasonable alternative to the acquisition of land, whether such acquisition be effected compulsorily or by agreement.

### **Compelling Case in the Public Interest**

- 3.17 As set out above, the CSLR scheme is required to enable SCGV as well as delivering the two additional objectives of, (i) improving the strategic highway network and (ii) addressing local transport issues. In achieving these objectives, the Council considers that the CSLR scheme would make a significant contribution towards the social, economic and environmental wellbeing of Carlisle, Cumbria and the wider Borderlands region. The CSLR Scheme is also viewed as being the most appropriate solution to the needs and growth ambitions of Carlisle and the sub-region.

- 3.18 Without the confirmation of the CPO, the CSLR Scheme would likely not go ahead and a fundamental review of the proposal would be required, which would lead to lengthy delays and a loss of confidence and momentum that has otherwise been built up. This would inevitably lead to a sub-optimal solution, if indeed an alternative could be found.
- 3.19 The Council has considered the negative effects that its pursuance of compulsory purchase powers would have upon those with an interest in the land required for the CSLR scheme, and has weighed those private losses (both on an individual basis and collectively) against the public benefits that the scheme would bring. This balancing exercise is set outlined in the draft Statement of Reasons in support of the case for making the CPO and SRO. It necessarily includes careful consideration of the impacts of the CSLR scheme on the human rights of those affected by it (see paragraphs 3.34 to 3.37 below). Appendix 3 to this report contains the draft Statement of Reasons – see in particular Chapter 13 of the draft Statement of Reasons.
- 3.20 Having carried out that balancing exercise, the Council believes that the public benefits would outweigh the private losses and that, on that basis, there is a clear and compelling case in the public interest which would justify the use of compulsory purchase powers to facilitate the delivery of the CSLR scheme.

### **Funding**

- 3.21 The scheme is currently estimated to cost £144m on the basis of a preliminary design standard including (amongst other things) all land assembly costs (including blight).
- 3.22 In July 2020, the Council entered into the GDA with Homes England to receive up to £134m of HIF grant funding for the construction and delivery of CSLR. In addition, Carlisle City Council and Cumbria County Council will contribute £10m (£5m each) towards the forecast scheme cost of £144m. Under the GDA, the Council has agreed to take responsibility for covering any cost over-run.
- 3.23 As such, the Council has full confidence that all necessary funding will be available for the CSLR scheme to proceed at the necessary time.

### **Planning Permission**

- 3.24 The planning application for the CSLR was submitted in October 2019. It is anticipated that the planning application will be determined in October 2020.
- 3.25 The Council's programme for progressing the CPO and SRO aims to ensure that whilst the Orders are proposed to be made (subject to Cabinet approval) during summer 2020, the timescales are such that planning permission would have been granted in advance of any public inquiry for the CPO and SRO. The Council will need to have planning permission in place prior to confirmation of the Orders.

### **Last Resort**

- 3.26 To deliver the CSLR scheme all relevant land interests affected by the scheme will need to be acquired, preferably by voluntary agreement following negotiation,

in a timely way, as a construction programme could only progress with certainty at a rate dictated by the timing of the last acquisition. The making of a CPO is therefore considered to be essential to facilitate delivery of the CSLR scheme in line with the Council's intended programme, particularly as land and interests in land in unknown ownership are affected (and for which there is no other option but a CPO).

- 3.27 The relevant Government Guidance makes clear that use of compulsory purchase powers is intended to be a measure of 'last resort'. A land assembly strategy has been prepared as part of the GDA; it sets out the approach to be taken and demonstrates that reasonable efforts are to be employed to acquire the necessary land by voluntary agreement and that there is a compelling case in the public interest justifying the use of CPO powers.
- 3.28 Whilst it is anticipated that further progress can be made on the negotiations for some parcels of and interests in land, the size of the scheme, extent of the area it covers, the number of land interests involved and the presence of land interests will very likely mean that not all interests can be acquired by agreement.
- 3.29 The Council has actively engaged or sought to engage with all known freehold owners, lessees, tenants and occupiers of the CPO land on an individual basis throughout the development process to date. This is an ongoing process.
- 3.30 These discussions will continue wherever possible, hopefully limiting the number of interests over which compulsory purchase powers will need to be exercised. Such discussions will also help to inform the accommodation works (aimed at accommodating adjoining and affected landowners and reducing the impact of the CSLR scheme on their land).
- 3.31 However, given the Council's need to deliver the CSLR scheme within a specified timescale and given the number of interests required and the related scope of negotiations, the Council has concluded it is highly unlikely it will be able to deliver the CSLR scheme within this timescale without the CPO. In addition, some plots are in unknown ownership and therefore cannot be acquired by agreement; in these cases, proceeding by way of compulsory purchase is the only route open to the Council.
- 3.32 The Council has already acquired two properties by agreement (Brisco Station House and Newbiggin View). These properties are located at the eastern end of the CSLR Scheme, adjacent to the West Coast Main Line Railway.
- 3.33 All interests in land that will be affected by the delivery of the CSLR scheme and which will need to be acquired for the CSLR project will be set out in the CPO Schedule, a draft of which is included in the draft CPO in Appendix 1.

### **Human Rights**

- 3.34 The Council is of the view that on balance, the significant public benefits to which the CSLR scheme would give rise would outweigh the negative effects upon, and the private losses of:



- those persons who own land or have an interest in land which is required for the CSLR scheme; and
- those persons who would be affected by the stopping up of private means of access pursuant to the SRO.

3.35 The Council also notes that such private losses would be mitigated by the fact that landowners, and those with the benefit of interests in land affected by the implementation of the CPO, would be entitled to compensation payable in accordance with the statutory Compensation Code. Further, those persons with a private means of access stopped up in pursuance of the CSLR scheme would be provided, through the SRO, with a replacement means of access, where such replacement means of access was necessary.

3.36 The Council therefore considers that the proposed compulsory purchase of land and new rights over land is:

- legitimate – in that if authorised by a confirmed CPO, the acquisition would be lawful;
- necessary – in that there is a need for the CSLR scheme and land in the CPO is required to be acquired to enable that scheme to come forward in the form provided for the SRO; and
- proportionate – in that the private losses to which the CSLR scheme would give rise would be outweighed by the significant public benefits which it would deliver.

3.37 Any infringement of the human rights (as protected by the European Convention on Human Rights, incorporated in UK domestic law by the Human Rights Act 1998) of those persons whose interests are affected by the Orders is therefore considered by the Council to be proportionate and legitimate and in accordance with domestic and European law.

### **Equalities**

3.38 The Public Sector Equality Duty (PSED) requires public bodies to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations between different people when carrying out their activities.

3.39 During the development of the CSLR scheme and the preparation of the Orders, the Council has had regard to the PSED. Early consultation and involvement events identified who would be using the CSLR and during the design a conscious effort was made to remove or avoid physical restrictions. The design reflects applicable needs and offers diverse design solutions for people with disabilities to travel in ways that suit their own personal requirements without making anyone an exception to the rule.

3.40 In formulating and promoting the Orders, the Council has had full regard to its statutory duties and obligations under the Equality Act 2010 and in particular, to its obligations in sections 149 and 150 of the 2010 Act, in taking into account the differential impact the Orders will have on persons with protected characteristics. Whilst it is recognised that the CSLR Scheme will have impacts on a range of land and property interests it was found that it would not have any implications on specific equality, diversity, cohesion or integration issues.

3.41 The impact of the CSLR scheme will continue to be monitored and reviewed throughout the promotion and implementation of the Orders to ensure that any impact can be considered and mitigated as necessary.

### **The Order land (including Special Category Land)**

3.42 There are circa 480 plots of land that have been identified as being required for the CSLR. Each plot may have one or more interests in the land due to the presence of lessees, tenants or occupiers in situ, or the existence of separately owned subsurface mines and minerals rights or the presence of existing public highway. Other interests may include access rights and covenants, for example. Some plots are already in the Council's ownership, and in the case of some plots, it may be impossible to ascertain ownership, notwithstanding diligent inquiry. Due to the number of land interests affected by and required for the CSLR scheme, there is the risk that not all interests can be acquired by negotiation and therefore it is necessary to make the CPO in a timely manner and in order to deliver the CSLR scheme within the timescales set out in the GDA.

3.43 The CSLR scheme is typically routed through rural land and there are 16 agricultural businesses affected by the scheme.

3.44 There are no plots of land in the CPO which are held by the National Trust or which form part of a common, open space or fuel or field garden allotment. The City Council owns land at the western end of the CSLR scheme, adjacent to the A595 and Peter Lane. Whilst this has been included in the CPO, it is anticipated that this land will be transferred to the Council by agreement as part of ongoing joint working arrangements for the delivery of the CSLR Scheme and SCGV.

3.45 There is no Crown owned land or assets within the land which is proposed to be included in the CPO.

3.46 A number of statutory undertakers or other statutory bodies own land or have interests in the land which is proposed to be included in the CPO, including Highways England, Network Rail, Northern Gas Networks Limited and Electricity North West Limited.

3.47 Two such key statutory undertakers/bodies are Highways England and Network Rail.

3.48 Highways England is not a statutory undertaker and nor is it a Crown body, but the Council is treating it with due regard given its statutory status as a Strategic Highways Authority.

- All of Highways England's plots except two fall outside of its operational land and are no longer required by Highways England. There is an agreement in principle for the voluntary transfer of this land from Highways England to the Council.
- In respect of the two plots that comprise operational land, these are required (albeit only on a temporary basis) to carry out improvements to the Northbound Off-Slip at Junction 42 of the M6. The Council is therefore in the

process of entering into an agreement with Highways England under section 6 of the Highways Act 1980 in order to permit such works to the slip road and avoiding the need for compulsorily acquisition of Highways England's interests in land. The Section 6 agreement will be entered into before the Orders are made.

3.49 There are a number of Network Rail plots that are affected by the CSLR scheme. A number of new rights over land in these plots are required by the Council for the construction, operation and future maintenance of a new bridge over the Cumbrian Coast Line railway and a new bridge over the West Coast Main Line railway. The rights plots comprise some of Network Rail's operational land. The Council is seeking to acquire such new rights by agreement and the CPO is being has been prepared in accordance with the feedback received from Network Rail.

- In addition, the Council is seeking to acquire title to one non-operational Network Rail plot, which is required to help connect the new shared path close to the disused and former railway station at Cummersdale (south west of the Cumbrian Coastal Line Railway Bridge). The Council is seeking to acquire such land by agreement and the CPO has been prepared in accordance with the feedback received from Network Rail.
- Discussions have been taking place with Network Rail for some time now and are all positive. The Council is aware of no reason why the necessary land and new rights cannot be acquired from Network Rail by agreement in due course.
- The Council has entered into a Basic Asset Protection Agreement with Network Rail and will be seeking to enter into an Asset Protection Agreement with Network Rail as the CSLR scheme progresses. This is a requirement from Network Rail where any scheme passes close to or over/under its network.
- The Council has entered into a number of Asset Protection Agreements with Network Rail on previous projects, resulting in the successful delivery of those projects. There are therefore no known issues or concerns as to why this will not be completed by the time required.

3.50 There are also a number of statutory undertakers and telecoms providers who have an interest, relating to their apparatus, in the land which is proposed to be included in the CPO. In some cases, this apparatus will need to be relocated and in other instances can remain in-situ subject to protective measures being put in place. The Council is confident that all diversion agreements will be entered into at the necessary time such that the presence of statutory undertakers' and telecoms operators' land interests and apparatus are not considered to be impediments to the CSLR scheme proceeding.

### **CPO and CSLR Delivery Programme**

3.51 The headline target programme for the CPO and CSLR scheme is set out in the GDA as follows:

- Make CPO - September 2020
- Planning permission for CSLR granted – October 2020
- Confirm CPO - October 2021

- Implement CPO - March 2022
- CSLR Construction Start - March 2022
- CSLR Construction Completion – May 2024

3.52 In parallel to progressing the CPO process, discussions are underway with all the affected landowners. For completeness, the CPO includes all known land interests and rights that are necessary to construct, operate and maintain the CSLR Scheme. This provides a backstop position in the event that any anticipated land transfers, dedications or acquisitions that are currently underway or impending do not reach agreement or the ownership of land which is currently unknown cannot be identified and needs to be acquired compulsorily. This approach will provide a means to offer confidence that all interests known or unknown can be acquired so as to deliver a 'clean' site for the construction of the CSLR in line with the project programme.

### **Side Roads Order (SRO)**

3.53 A SRO will also be required, for the stopping up and improvement of highways which connect with the new classified road to be delivered as part of the CSLR scheme, for the construction of new highways, the stopping up of private means of access to premises, the provision of new means of access to them, and other associated works, including alterations to Public Rights of Way.

3.54 Construction of the CSLR will also require some changes to the existing highways including the M6 Junction 42 at the eastern end. The Council must secure the powers in the SRO to make changes to existing highways. Since the CSLR will be a classified road the powers to make such changes are obtained through a SRO. An agreement pursuant to section 6 of the Highways Act 1980 will also need to be completed with Highways England in respect of the works proposed at M6 Junction 42 in advance of making the SRO. Without SRO powers and the necessary highways agreement with Highways England, the CSLR cannot be implemented.

3.55 The SRO is to be known as "The Cumbria County Council (A689 (Carlisle Southern Link Road) Classified Road) (Side Roads and Other Works) Order 2020" a draft of which is in Appendix 2. The SRO is to be made under sections 6, 14 and 125 of the Highways Act 1980.

## **4 Options Considered and Risks Identified**

4.1 In considering whether to approve the recommendations in this report to authorise the making of the CPO and SRO (and to implement them if they are confirmed by the Secretary of State), Cabinet needs consider the following options.

### **Option (a) – Agree Recommendations**

4.2 The Council has to be certain that it will be able to obtain all the land and new rights over land that are needed for the construction of CSLR to fulfil the obligations in the GDA. Certainty of delivery of the CSLR scheme cannot be guaranteed without the inclusion of the CPO process in the Council's land assembly strategy. As summarised above, it is considered that there is a

compelling case in the public interest to justify use of CPO powers to secure the land interests and rights required for the CSLR. Where possible and in the first instance land will be acquired by agreement and only via a CPO if negotiations cannot be completed within the requisite timescale. Cabinet's approval of a strategy involving the use of CPO powers will help to ensure that:

- Land required to construct the CSLR scheme can be acquired. If land acquisition cannot be achieved by negotiation and agreement the CPO powers will be used to enable all remaining land to be acquired compulsorily.
- Changes required to be made to existing highways to accommodate the construction of the CSLR scheme will be able to be made, pursuant to the SRO, if it is made and subsequently confirmed.

### **Option (b) – Do not Agree Recommendations**

4.3 If Cabinet decides not to approve the recommendations, the Council will be in default of the GDA. The Council has entered the GDA to deliver the CSLR with the GDA placing an obligation on the Council to make a CPO to ensure all the necessary land can be acquired in order to build the road. If the Council does not agree to make the CPO, it could be considered as a Fundamental Default under the terms of the GDA, triggering claw-back of the grant payments received to date of circa £5m and preventing the scheme and the associated benefits from being realised.

## **5 Reasons for the recommendation/Key benefits**

5.1 It is considered that there is a compelling case in the public interest to justify use of CPO powers to secure the land interests and rights required for the CSLR scheme to unlock SCGV. The Council must also secure the powers to make changes to existing highways.

5.2 As is noted in the Need for the Scheme section above the CSLR scheme will :

- Unlock the development of the SCGV proposals and provide highway capacity and access to support the delivery of SCGV
- Improve the strategic highway network (including connectivity between the M6, the A595 and West Cumbria.
- Address local transport issues (including relieving congestion on the southern routes in and out of Carlisle, by contributing to the provision of a full orbital route around Carlisle.

## **6 Financial – What Resources will be needed and how will it be Funded?**

6.1 The recommendations of this report are to seek Cabinet approval to acquire by agreement the land and new rights over land needed to allow the construction, operation and maintenance of the CSLR as well as the making of a CPO and SRO. The cost of the land and new rights purchases and any potential public inquiry which may be held if there are objections to the Orders would be funded from the project budget of £144m.

- 6.2 Cabinet is also recommended to approve the additional contributions of £138.018m (£136.957m to the Capital Programme 2020/21-2024/25 and £1.061m to 2025/26) to the existing capital scheme.
- 6.3 The table overleaf breaks down the project budget of £144m. This shows that of the £5.640m of Council funding previously approved for CSLR, there has been £4.373m spent to 31<sup>st</sup> March 2020, the remaining £1.267m has been slipped into the Capital Programme 2020-2025. A further £0.342m has been spent against the Infrastructure Deficit Support (IDS) project. Following completion of the GDA, these will be claimed against HIF funding and then be available in the future years of the project. Additional contributions of £136.957m are requested to be included in the Capital Programme 2020-2025 approved by Council in February 2020, and £1.061m for 2025/26. Note all HIF funding must be spent by 31 March 2024.

	£m	£m
<b>Capital Programme 2020-2025</b>		
2020/21	5.213	
2021/22	15.887	
2022/23	58.251	
2023/24	51.958	
2024/25	5.648	
<b>Sub Total Additional contribution to add to Capital programme 2020-2025 (HIF and CaCC and reimbursed CuCC funding)</b>		<b>136.957</b>
Slippage from 2019/20		1.267
<b>Total included in the Capital programme 2020-25</b>		<b>138.224</b>
<b>Capital Programme 2025-26</b>		
<b>2025/26 (CaCC and reimbursed CuCC funding)</b>		1.061
<b>Total Capital Programme from 1.4.2020</b>		<b>139.285</b>
<b>Actual Project Expenditure to 31.3.2020</b>		
CSLR project	4.373	
IDS project	0.342	
<b>Total Expenditure to 31.3.2020 (reimbursed from HIF Funding)</b>		<b>4.715</b>
<b>Total Project funding</b>		<b>144.000</b>

- 6.4 The resources required to support the land acquisition and Statutory Orders Process will be through existing, Planning, Capital, Legal and Finance teams, with external legal and project support funded from the project budget of £144m of which £138.224m is included in the 2020/21-2024/25 Capital Programme.
- 6.5 Should Cabinet not approve the recommendations the Council could be in 'Fundamental Default' of the GDA, which would result in the clawback of grant payments received to date and the inability to draw down additional defrayed expenditure, these would both need to be met from existing Council Resources.

## **7 Legal Aspects – What needs to be considered?**

- 7.1 If Cabinet decides and agrees to the recommendations in this report, it will give authorisation and approval to the steps required to continue with the CSLR scheme. Such a Cabinet decision will not bind the Council to continue with the CSLR scheme but will be an important step in progressing it.
- 7.2 Nonetheless, it is considered to be a Key Decision given the CSLR scheme will require major changes in transport arrangements, affecting two divisions and with substantial land values involved. Therefore, it is appropriate for Cabinet to consider this report and agree to the recommendations.
- 7.3 Any other legal considerations are detailed above.

## **8 Health & Safety Implications**

- 8.1 The Council has a responsibility under the Health & Safety at Work Act 1974 to ensure, as far as is reasonably practicable, that adequate health and safety provisions are in place.
- 8.2 If approved by Cabinet, the County Council will take responsibility for the construction of CSLR and the associated construction deliverables outlined in the report. The County Council will therefore also need to work with Carlisle City Council and construction contractors to ensure that adequate health and safety provisions are in place throughout the development and delivery phases of the project.

## **9 Council Plan Priority – How do the Proposals Contribute to the Delivery of the Council’s Stated Outcomes?**

- 9.1 Delivery of the CSLR will have an important role in supporting the delivery of the Council Plan objectives:
- The economy in Cumbria is growing and benefits everyone – The CSLR will unlock the St Cuthbert’s Garden Village and improve east west connectivity thereby facilitating economic growth in West Cumbria.
  - Places in Cumbria are well-connected and thriving – The CSLR will improve east west connectivity and promote thriving communities and businesses.
  - People in Cumbria are healthy and safe – The CSLR will promote healthy travel choices including walking and cycling provision along its entire length with links into existing cycling and walking networks.

## **10 What is the Impact of the Decision on Health Inequalities and Equality and Diversity Issues?**

- 10.1 As part of the assessment process for the CSLR Scheme a social impact appraisal and distributed impact appraisal was completed to assess the impacts of the scheme on different social groups. This evidenced that there were no differential impacts of the CSLR Scheme on different social groups. In formulating

and promoting the Orders, the Council has had full regard to its statutory duties and obligations under the Equality Act 2010 and in particular, to its obligations in sections 149 and 150 of the 2010 Act, in taking into account the differential impact the Orders may have on various groups of persons with different characteristics (including characteristics protected under the Equality Act 2010). This will continue to be monitored and reviewed throughout the promotion and implementation of the Orders to ensure that any impact can be measured and mitigated as necessary.

10.2 The CSLR scheme development process to date has included two 6 week periods of public consultation to reflect good practice and the outcomes of this consultation have influenced the design of the scheme.

## 11 Appendices and Background Documents

### Appendices

Appendix 1 – CSLR CPO, Schedule and Plans (Draft) - *is enclosed for members only and is not for publication by virtue of Paragraph(s) 1 of Part I of Schedule 12A of the Local Government Act 1972, as this report contains exempt information relating to any individual.*

Appendix 2 – CSLR SRO, Schedule and Plans (Draft)

Appendix 3 – Statement of Reasons (Draft)

### Background Documents

None

## Key Facts

**Electoral Division(s):** Wetheral, Dalston and Burgh

Executive Decision	Key Decision Included in Forward Plan	Exempt from call-in	Exemption agreed by scrutiny chair	Considered by scrutiny, if so detail below	Environmental or sustainability assessment undertaken?	Equality impact assessment undertaken?
Yes	Yes	No	No	No	No	No

**Approved by the relevant Cabinet Member/s on 17 August 2020**



**Previous relevant Council or Executive decisions**

- CSLR Housing Infrastructure Fund Grant Determination Agreement – July 2020
- CSLR Submission of the Outline Business Case to the Housing Infrastructure Fund, Cabinet 26 July 2018
- CSLR Inclusion of CCC £5m contribution into the Capital Programme, Council 5 September 2018
- Approval of £0.498m accelerated spend from the 20/2021 to 2018/19 Capital Programme for the CSLR, Cabinet 20 December 2018
- £4.502m included in the 2019/20 Capital Programme approved by Council in February 2019, updated in April and June 2019 by Council and September 2019 by Cabinet

**Consideration by Overview & Scrutiny**

N/A

**Background Papers**

None

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