

To: Cabinet
Date: 14 December 2022
Report of: Executive Director (Development)
Title of Report: Cowley Branch Line Local Funding for Full Business Case

Summary and recommendations	
Purpose of report:	To seek approval for the funding package and to enter into all necessary contracts to undertake the Approval in Principle design and Full Business Case and local connectivity studies for the reopening of the Cowley Branch Line to passengers. This includes the parameters for a financial contribution from Oxford City Council, including the ring-fencing of future Community Infrastructure Levy (CIL) contributions
Key decision:	Yes
Cabinet Member:	Councillor Louise Upton, Cabinet Member for Health and Transport
Corporate Priority:	All
Policy Framework:	Council Strategy 2020-24

Recommendations: That Cabinet resolves to:	
1.	<p>Approve the funding strategy and recommend Full Council to approve a capital budget of £4.56m to deliver the next phase of the project made up of:</p> <ul style="list-style-type: none"> • Up to £289,000 up front contribution from Oxford City Council from already-secured Community Infrastructure Levy (CIL) funds; • Up to £3.5m of CIL to be forward funded from local landowners and then be repaid/offset from CIL liabilities for any future development that gains planning consent after the date that contracts are entered into; • At least £771,000 from local landowners and Oxfordshire County Council as a non-repayable grant contribution; • In the event that the submitted Levelling Up Fund 2 application seeking £4.0m is found to be successful in total or in part, the local funding arrangement described above would be reduced

commensurately from one or more of the funding pots outlined above.

2. **Delegate authority** to the Executive Director (Development), in consultation with the Council's Section 151 Officer, the Head of Law and Governance, and the Cabinet Members for Health & Transport and for Finance & Asset Management to agree financial contributions and terms, and then enter into all relevant funding agreements and contracts.

Appendices

Appendix 1	Confidential – breakdown of Network Rail costs
Appendix 2	Indicative programme for Network Rail
Appendix 3	Indicative programme and costs for public realm and connectivity feasibility work
Appendix 4	Confidential – more detailed breakdown of costs regarding public realm and connectivity feasibility work
Appendix 5	Risk register

Introduction and background

1. Oxford City Council ("City") and Oxfordshire County Council ("County") are working in partnership with Network Rail ("NwR"), the Department for Transport ("DfT"), and rail industry stakeholders to deliver a programme of improved rail access, capacity and reliability that is vital to secure better transport connectivity and underpin sustainable growth for Oxford and Oxfordshire and enhance its positive impact within the region, and nationally.
2. Reopening the Cowley Branch Line ("CBL") to passengers (it is currently used for freight services to and from BMW-Mini Plant Cowley), with two new stations in south and east Oxford, is a key project identified within the Oxford Local Plan, the Oxfordshire Local Transport and Connectivity Plan and the Oxfordshire Rail Corridor Study. The proposed station known as Oxford South is intended to be next to the Oxford Science Park, Littlemore and the Kassam Leisure Complex, with the proposed station at Oxford East, next to Oxford Business Park, Oxford Retail Park and Blackbird Leys. See Figure 1 for more detail.

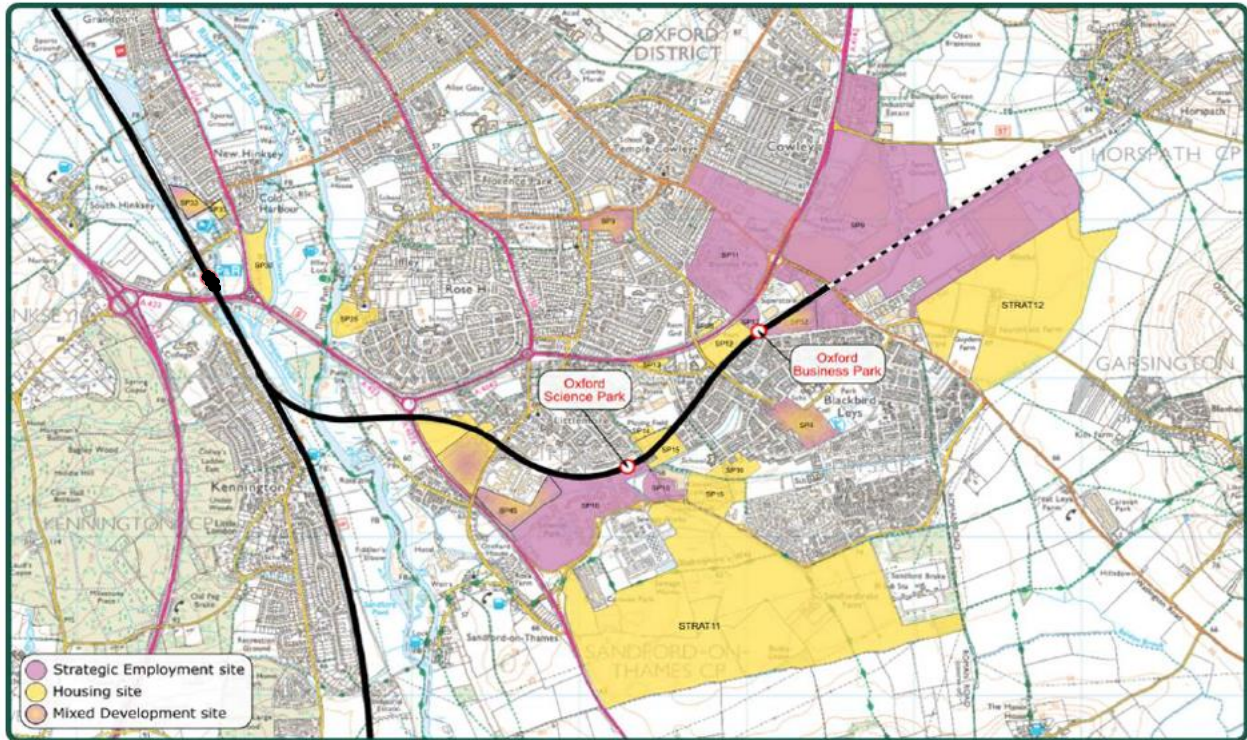


Figure 1. OS Map showing proposed location of two stations in the context of current and proposed future developments and communities

3. The project will improve connectivity to Oxford and London from these areas, which include some of the city's most economically deprived wards, as well as key areas of employment, research and development. The current planning proposal to be worked up through the next phase of work is for the introduction of a half-hourly direct service from the new stations to London Marylebone via Oxford, utilising the existing Chiltern Railways service. Trips between the new stations and Oxford railway station will take under ten minutes providing a significant reduction in journey times compared to present day travel options, with an assumption that the cost will be comparable to current public transport options.

The Outline Business Case and moving to a Full Business Case

4. NwR were awarded £0.714m from the DfT in early-autumn 2021 to undertake PACE Phase 1 (single-option design) and prepare an Outline Business Case, which concluded in October 2022. This work was favourable and now presents the opportunity to move forward to the next stage of detailed work.
5. However, the CBL project does not have committed funding past the current Outline Business Case stage. Consequently, without new funding the project will not progress to the next stage – the development of a Full Business Case ("FBC"). This stage is estimated to cost £4.56m (including progression of the designs for the rail infrastructure, new stations and solutions to ensure wider connectivity and access to the surrounding neighbourhoods and facilities).
6. NwR has a dedicated project team that is working to newly adopted industry principles "Project Acceleration in a Controlled Environment" (PACE). PACE aims to develop and deliver rail project interventions in a quick and efficient manner. Assuming the £4.56m for the FBC can be found, the project programme shows with seamless transition from conclusion of this current Outline Business Case stage into the FBC stage. This could see the FBC finalised in spring 2024.

7. There is a need to commit contractually to the FBC funding in January 2023 in order to avoid missing the window of opportunity where the relevant NwR resource is in place. Missing the January deadline will lead to delay to any opening of the rail line and will increase the risk of other projects winning government support.
8. An application has been made for Levelling Up Fund Round 2 monies (“LUF”) to fund the FBC. With delays in the outcome of the application for LUF and the deadlines associated with the CBL project, the City and other project stakeholders have identified the local funding proposal outlined in this report largely based on CIL, which would otherwise conceivably be used for the delivery phase of the project. LUF funding to deliver the FBC would be a more appropriate way to fund this because it would allow for CIL funds to be deployed on the delivery phase.
9. Officers have undertaken a period of negotiation with local landowners close to the proposed line and new stations seeking financial contributions towards the FBC.
10. The City has reached agreement in principle from three local landowners (“Landowners”), with Cabinet approval at the City being a key step before contracts can be signed in January 2023, alongside each organisation’s own governance process.
11. The FBC is not a guarantee that funding for the delivery of the project will be provided. The work would though set out the full construction costs to deliver the scheme, and secure all necessary permissions, including planning. If the funding for the construction work was then forthcoming, the earliest the CBL could be reopened is anticipated to be December 2026, which will be further assessed as part of the next phase. However, the CBL scheme is also under considerable competition against other national infrastructure projects for government grant funding. Recent DfT precedent set through the Restoring Your Railways initiative for which our scheme is distinctively aligned, has sought sizeable contributions from promoters of up to 25% of the project delivery cost. The likelihood of the CBL scheme successfully receiving government grant funding for the delivery stage and opening by December 2026, would be greatly strengthened by the size of local funding contribution generated.
12. The important point to note is that while finding a funding package for the £4.56m to deliver the FBC does not guarantee the ultimate delivery of the CBL, without the FBC, there is little realistic chance that the case for the CBL can be made and future delivery funds secured.

Funding the FBC and public realm feasibility work

13. The next stage of project development work to take the scheme to FBC in order to be able to achieve a desired December 2026 date requires the following funding:
 - a. NwR has shared its cost estimate of £3.26m (See Appendix 1 - confidential - for cost breakdown and Appendix 2 for indicative programme which was accurate assuming October 2022 funding and project commencement) for the delivery of the FBC. This is focussed on rail infrastructure and stations located within the Network Rail land corridor.
 - b. Public realm and connectivity feasibility is expected to be £1.30m (see Appendix 3 for programme and summary cost breakdown and Appendix 4 – confidential – re more detailed cost breakdown). Budget includes cost for City

to manage the work stream. The objective of this is to ensure station access and egress is optimised, especially by sustainable modes.

- c. Combined funding requirement of £4.56m needs to be sourced through project beneficiaries local to Oxford, to the extent that LUF monies are not available.
14. The City expects the private sector to play a significant role in the funding of this £4.56m (and in the fullness of time, subject to the scheme progressing to a successful resolution of the FBC, to contributing to the funding of the delivery and implementation costs) for three reasons:
- a. Central government has been clear that 100% government grant-funded public transport schemes are not possible for the foreseeable future;
 - b. Both the City and County have limited funds available and a duty to use their finite public resources across Oxford and Oxfordshire respectively;
 - c. There are also many other businesses and other organisations which own strategic land within one mile of the proposed CBL railway stations, and this proximity to a new sustainable public transport connection to Oxford and London will create direct benefits to those institutions such as increase in land value, expanded catchment area for attracting workers, the potential to repurpose car parking for more useful or commercially beneficial uses.
15. The local funding strategy which has been agreed in principle, subject to Cabinet approval and each organisation's own governance process, is:
- a. City capital contribution of up to £289,000 from existing Community Infrastructure Levy (CIL) that has already been secured from developments across the city;
 - b. Non repayable grant funding contribution of at least a total of £771,000 to be provided by Landowners and developer contributions already held by Oxfordshire County Council. This is not linked to future unconsented development and therefore not to be offset against any anticipated future CIL liabilities;
 - c. Up to £3.5m will be forward-funded by Landowners to the City Council on the basis that it will be refunded / offset from CIL liabilities of any of their future developments that gain planning permission after the date the contract is entered into. To the extent that those developments do not proceed, recovery from CIL is at the Landowner's risk.
16. In order for the local funding to be brought to bear and the FBC and supporting feasibility work delivered, the legal framework which has been agreed in principle, subject to Cabinet approval and each organisation's own governance process, is:
- a. City as "Local Scheme Promoter" enters into a Development Services Agreement ("DSA") with NWR to undertake FBC and into relevant contracts with consultants to deliver the supporting feasibility work;
 - b. City signs "Collaboration Agreements" with Landowners, which set out the terms for their funding and their role in ongoing project governance;
 - c. City agrees a "Memorandum of Understanding" with County, which sets out a good working relationship between the two local authorities in order to deliver the FBC and feasibility work successfully.

17. The proposed split of funding contributions is the result of negotiations by City officers with Landowners, seeking to share the risk between the private and public sectors, while ensuring that as scheme Promoter, the Council is commensurately committed to the project. These specific contributions of non-repayable grant funding and forward-funding of future CIL payments from developments for each party have been agreed in principle and are not expected to change unless LUF funding is made available:

Organisation	Risk Capital	CIL forward-funded	Total contribution to CBL FBC
Oxford ARC (Oxford Business Park)	£250,000	£1,443,943	£1,693,943
Oxford Science Park	£250,000	£1,443,943	£1,693,943
Ellison Institute for Transformative Medicine	£65,000	£612,113	£677,113
Oxfordshire County Council	£206,000		£206,000
Oxford City Council	£289,000		£289,000
TOTAL	£1,060,000	£3,500,000	£4,560,000

18. Financial and legal terms are subject to due diligence by all parties and contract in January 2023, including specific caveats:

- a. The risk of development not proceeding and therefore CIL not falling due sits with the Landowner and not the City Council;
- b. Quantum of CIL funding available for forward-funding excludes the 5% to administer CIL and 15% for Neighbourhood CIL, which would be recovered at the future date when CIL comes due;
- c. Payment schedule to be determined by back-to-back provisions with NwR, linked to the development programme milestones;
- d. Detailed administrative process for repayment or offsetting of future CIL receipts when development commences to be resolved, following dialogue with City's CIL team and this may involve a revised approach if Government guidance or statute relating to CIL changes.

19. Alternative approaches would have a different balance of financial commitment between the public and private sectors and may not deliver sufficient funding in time for the FBC and supporting feasibility work to be undertaken in 2023, targeting the opening of the line in December 2026.

- a. If City reduced its own contribution, then the private sector would see insufficient public sector buy-in for the project and would withdraw its own commitment – the FBC wouldn't be undertaken at all;

- b. Similarly, if local landowner beneficiaries do not make at-risk contributions separate from their development pipeline, then it would be reasonable for City revise its decision to ring-fence CIL as well as its own contribution and its role as local Promoter – consequently, the FBC work would not proceed;
- c. If City and the three local Landowners withdrew all local funding, then the scheme would not proceed to FBC let alone future project delivery, because central government has been clear that local funding is a prerequisite.

Decision-making process and proposed ongoing project governance

- 20. Given the NwR resourcing risks that result in the target of January completion of a DSA, a December 2022 Cabinet decision and Full Council in-year budget change is needed for the project to proceed. Cabinet are being asked to delegate the detail of the relevant funding agreements and contracts to the Executive Director for Development in consultation with the S151 officer and Monitoring Officer.
- 21. Once work on the FBC and feasibility studies are underway their progress will be considered by a Programme Panel that comprises the programme lead for the City Council, County Council, NwR and each of the Landowners. The City Council and NwR are also seeking the involvement of DfT in the Programme Panel.
- 22. Each of the organisations represented on the Programme Panel shall have to comply with their own governance requirements and the role of the Programme Panel shall be to inform that process only. This will be set out in the relevant funding agreements and contracts.

Programme

- 23. If Cabinet agrees with the recommendations, then December 2022 and January 2023 will be used for legal due diligence by all parties to the agreements, seeking to enter the relevant contracts before the end of January 2023. These agreements would need to be signed before the 30 January Council meeting where the budget would require approval.
- 24. NwR has a 15-month programme for the next stage of work as per Appendix 2, commencing in February 2023 subject to contracts being signed in January 2023.
- 25. The public realm and connectivity feasibility’s programme is as per Appendix 3.
- 26. As the Promoter for the scheme, City will be responsible for coordinating the Programme Panel and for providing overall project management resource and the procurement function for the public realm and connectivity feasibility work. Preparation for all this (including advertising for a “Rail Development Regeneration Manager”) will need to commence in December 2022.

Financial implications

- 27. The City Council would be committing up to £289,000 CIL from money that has been secured to date, but not yet allocated to other schemes.
- 28. In addition to this, the City Council would pre-allocate the CIL available from future development by identified local landowners by up to £3.5m. Given the strategic importance and longstanding ambition to deliver the Cowley Branch Line to support existing and future residents and employees this is considered an effective use of CIL. It has shared the risk with private landowners and avoided the need for the council to borrow money when it does not control the development pipeline.

Whereas the landowners control their own development pipeline so the sooner it comes forward the sooner they are able to repay the forward funding.

29. The financial implications per financial year is shown as an indicative profile in the table below, with the exact numbers and the schedule of payments from Landowners to the Council, and then onto NwR, to be determined. However, they will be staggered such that the cash flow risk and therefore payment risk sit with Landowners (apart from the Council's own CIL contribution) and not with the Council.

Financial year	2022-2023	2023-2024	2024-2025	2025-2026	Total
Expenditure (of which a maximum of £3.789m total is CIL)	£423,000	£3,223,000	£840,000	£74,000	£4,560,000

30. Para 19 sets out why alternative approaches to funding would jeopardise the project, however it is also important to set out that following this paper's recommendations would most likely have financial opportunity costs for the City. Of current CIL funds, this would be up to £289,000. And of expected future CIL receipts, this would be up to £3.5m. This is therefore up to £3,789,000 of CIL which would not be available to spend on other local public infrastructure projects. However, the strategic importance of the CBL – with its prominence in the City Council's Local Plan and the County Council's Local Transport and Connectivity Plan – means that its funding through CIL would always be appropriate and a top transport priority for use of CIL. It is more that the timing (in advance of coming due) rather than the principle of the ring-fencing is exceptional and strongly recommended in this case. Furthermore, the next phase of work increases the likelihood and speed of the CBL coming forward for implementation, which in turn would make more sustainable development possible, thus increasing future CIL receipts – so the opportunity cost is not a straightforward one.

31. If the FBC is undertaken, further work would then be required to establish a local funding pot to contribute to the capital delivery costs. A separate funding and financing study is underway to look at how the City and County councils should work with central Government and local employers, landowners and developers to secure contributions to this.

Legal issues

32. As set out above, the council will act as Promoter of the scheme and enter into back-to-back funding agreements and contracts to deliver this funding approach. The council's legal team have instructed Anthony Collins Solicitors to advise on the legal strategy and detail of the funding agreements, MoUs and contracts. The Legal Services Manager is also part of the project board providing advice on this matter.

33. Leading Counsel has advised that CIL receipts may be used to fund feasibility studies and/or detailed design work that is required for the provision of infrastructure. External solicitors advise that feasibility studies by the nature entail the possibility that a project does not proceed.

34. The Development Services Agreement with NwR will be entered by the Council using the negotiated procedure without prior call for competition as:
- a. competition is absent for technical reasons, i.e. that Network Rail have progressed the Outline Business Case and are in communication with the Department of Transport on its content and the subject matter of the agreement is intrinsically linked to the work already undertaken;
 - b. no reasonable alternative or substitute exists – in this connection the standard documentation of Network Rail has to be used; and
 - c. the absence of competition is not the result of an artificial narrowing down of the parameters of the procurement – it was always intended that the inhouse resource of Network Rail should be utilised as set out the application for Levelling Up funding.
35. The procurement of the consultant or consultants to undertake the connectivity and public realm feasibility work would be undertaken pursuant to the Council's contract standing orders and procurement strategy.

Level of risk

36. Please see attached Risk Register at Appendix 5. As a major infrastructure project, the main risk is that regardless of how well the FBC phase of work is undertaken, due to external factors beyond local control, the CBL scheme and new stations do not end up being delivered – at least within the target timelines. There are mitigations for this risk, but clearly as a scheme which would ultimately rely on significant central Government funding to be delivered, local parties such as the Council cannot be assured of delivery at this stage. However, we do know that not undertaking the FBC would be a guarantee of no CBL delivery in the coming years.

Equalities impact

37. The Cowley Branch Line infrastructure will be subject to an Equalities Impact Assessment. The decision to progress a Full Business Case for future infrastructure that is focussed on increasing accessibility to public transport for a wider part of Oxfordshire's community is considered positive in terms of equalities impact. Especially given the proximity of the potential new infrastructure to some of the most deprived communities in the city. A detailed Equalities Impact Assessment will be undertaken as part of the design and the infrastructure itself.

Carbon and Environmental Considerations

38. The decision to progress a Full Business Case for future infrastructure that is focussed on increasing accessibility to public transport for a wider part of Oxfordshire's community is considered positive in terms of carbon and environmental considerations as it is likely result in a reduction in car trips. NwR have their own national environmental strategy¹ and action plan for biodiversity² that this project would need to conform with.

¹ [Network Rail Environmental Sustainability Strategy, 2020-2050](#)

² [Network Rail Biodiversity Action plan](#)

Conclusion

39. Given the strategic importance and longstanding ambition to deliver the Cowley Branch Line to support existing and future residents and employees this is considered an effective use of existing and future CIL. It has shared the risk with private landowners and avoided the need for the Council to borrow money when it does not control the development pipeline. The timing is key to enable the accelerated critical path to achieve completion in 2026 to be maintained. In addition, it enables the single option design and Outline Business Case developed by Network Rail using Department for Transport funding to be utilised whilst it is up to date, maintaining current resources and momentum on the scheme.

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Background Papers: None