

Report of the Strategic Director – Regeneration to the meeting of Executive to be held on 1 December 2015.

AN

Subject:

West Yorkshire+ Transport Fund - Harrogate Road / New Line Junction Improvement Update and Compulsory Purchase Order (Highways Act 1980)

Summary statement:

Following Executive's consideration of a report seeking approval to the principles of the Harrogate Road / New Line junction improvement on 13 January 2015 this report:

1. Provides Executive with an update on recent progress on the delivery of the Harrogate Road / New Line junction project and sets out the next steps of delivery.
2. Seeks Executive's formal resolution to commence preparation of compulsory purchase processes and seeks approval to compulsorily acquire land and property, where negotiations have failed to secure the necessary rights and ownerships, to deliver the Harrogate Road / New Line junction improvement scheme under Sections 239, 240, 246, 250 of the Highways Act 1980, Section 40 of the Road Traffic Regulation Act 1984 (RTRA) and the Acquisition of Land Act 1981.

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Overview & Scrutiny Area:

Environment & Waste



1. SUMMARY

- 1.1. This report provides Executive with an update on recent progress on the delivery of the Harrogate Road / New Line Junction Improvement scheme and sets out the next steps of delivery.
- 1.2. It also seeks Executive's formal resolution to commence preparation of compulsory purchase processes and approval to compulsorily acquire land and property, where negotiations have failed to secure the necessary rights and ownerships, to deliver the Harrogate Road / New Line Junction Improvement scheme under Sections 239, 240 and 246 of the Highways Act 1980, Section 40 of the Road Traffic Regulation Act 1984 ("RTRA") and the Acquisition of Land Act 1981.

2. BACKGROUND

- 2.1. Following consideration of a report on the Harrogate Road / New Line junction improvement scheme in January 2015, Executive resolved:

RESOLVED:-

- (5) (v) **In the event of any unsuccessful negotiations to obtain necessary interests in land by negotiation: Strategic Director Regeneration and Culture submit a further report to Executive to establish the scope of any necessary Compulsory Purchase Order and seeking approval to commence the preparation and promotion of any Compulsory Purchase Order required to facilitate the delivery of the proposals through acquisition of land necessary for the delivery of the scheme.**
- 2.2. As Members will be aware the West Yorkshire Combined Authority ("WYCA") operates a project assurance process comprising three distinct approval stages. The Harrogate Road / New Line Junction Improvement has already successfully achieved the first of these stages. To achieve confirmation of the Outline Strategic Case for the scheme (the next approval stage) all statutory procedures, including land acquisition and refinement of scheme costs must have been completed.
- 2.3. **Land and Rights to be included in the Compulsory Purchase Order (CPO)**
- 2.4. In addition to facilitating the eventual delivery of this scheme, initiating the CPO process over the entire land holding that is required to implement that scheme offers a 'security' and 'backstop' position in evidencing the deliverability of this scheme to WYCA. Members should be aware that the use of compulsory purchase powers should be considered as a matter of last resort and that a compelling case in the public interest must be made out. Members are advised that acquisition by negotiation should continue and that the making of a resolution, or indeed the CPO itself does not require that these be discontinued.
- 2.5. The Council has the requisite powers under Sections 239, 240, 246 and 250 of the Highways Act 1980 for compulsory purchase of land and rights required.

- Section 239 (1) provides that a highway authority may acquire land required for the construction of a highway which is to be a highway maintainable at public expense and Section 239 (3) allows a highway authority to acquire land for the improvement of a highway being an improvement which the authority is authorised to make under the Act.
- 2.6. The powers of compulsory purchase in this section are subject to the distance limits set out in Section 249 and Schedule 18 of the Act.
- 2.7. In considering whether to confirm a CPO the Secretary of State will need to be convinced that there is a compelling case in the public interest for compulsory acquisition as use of such powers are to be considered a matter of last resort. Members should reach a similar decision before authorising its making on the balance of the information contained in this report.
- 2.8. The boundary of the CPO's Order Land is shown outlined in red on the Plan in Appendix 1. The extent of the Order Land shown in Appendix 1 represents the Council's maximum extent of scope of any order and realistically it is anticipated that the final scope included in any order would be smaller than that depicted. Within these areas all necessary land and rights which need to be acquired for the scheme, will be acquired under the CPO (where negotiation has failed to achieve agreement) to provide a clean title to the land. This includes land, buildings, plant, equipment, cables, pipes, rights and interest under, on and over the land.
- 2.9. Appendix 2 shows the extent of land coloured green which is currently either controlled or owned by the Council.
- 2.10. The land coloured pink in Appendix 3 is the residual land potentially to be acquired for the scheme under the CPO when combining plans in Appendix 1 and Appendix 2. Again it should be stressed that the scope of land identified represents the Council's current anticipated maximum requirements as described previously.
- 2.11. An Order Map and Schedule of Ownerships is currently being drafted as part of a land referencing exercise and the current Schedule of Ownerships is included in Appendix 4. This schedule and Order Map will be finalised and published as part of the process for preparing the Order.
- 2.12. If a CPO resolution is made, this will be recorded in the Local Land Charges Register and disclosed on searches.

Statement of Reasons for the Compulsory Purchase Order

- 2.13. Although the Statement of Reasons document is non-statutory, this is an important document and is served with the statutory notices when the Order is made. It describes the land within the Order boundary, gives an outline of the case for the acquisition and of the proposed use and development, with details of the planning position, special considerations (e.g. listed buildings) policies and views of government departments, proposals relocation and details of any related order such as Highway Stopping Up and Closures.
- 2.14. At this stage of the process, in accordance with Government guidance, a draft

statement of reasons for the CPO is being prepared. A final statement will be produced and will be served on Landowners with the statutory notices when the Order is actually made.

Update on Scheme Development

- 2.15. A review to optimise access arrangements for individual businesses adjacent to the proposed scheme has been undertaken on the previously confirmed junction configuration. This work has been informed by a series of traffic surveys and confirmation of traffic modelling outputs which are continuing to be refined in preparation for the next WYCA approval stage process. Additional work has also been undertaken in identifying suitable compensatory parking for business properties affected by the widening of the junction.
- 2.16. Public transport impacts associated with the junction reconfiguration have been explored with colleagues in WYCA together with representatives of the various bus operating companies and appropriate proposals for bus shelter relocations and upgrades have now been incorporated into the proposals.
- 2.17. Financial approval has been obtained to acquire an opportune business property and negotiations to agreed terms are currently underway. Additionally the formal transfer of a parcel of land has been concluded at the north-west corner of the junction. To progress land assembly activities further funding provision for the professional services in advance of full funding allocation has been secured in principle from WYCA. In conjunction with WYCA the Council have recently appointed external property consultants to assist in progressing land negotiations and assembly.
- 2.18. Along with other district partners WYCA now require Bradford Council to enter into formal funding agreements in order to continue funding preparation costs for all projects financed through the Growth Deal. An officer working party has been established to progress implementation of appropriate agreements in order that further slippage to the delivery programme can be avoided. It is currently anticipated that an agreement can be achieved before the end of December.

3. OTHER CONSIDERATIONS

- 3.1. The Side Roads Order (SRO) will, subject to Confirmation of the Secretary of State for Transport, empower the Council to stop up existing side roads and private means of access affected by the scheme, to improve existing side roads and to create new side roads and private means of access as a consequence of the works.
- 3.2. The layout of the scheme will remain subject to change as further refinement of the design takes place up to submission of details to WYCA for the next approval stage.

4. FINANCIAL & RESOURCE APPRAISAL

- 4.1. The funding for the scheme is derived from two principle sources, (i) the West Yorkshire+ Transport Fund and (ii) private developer contributions via a Section 106 obligation on a 70%/30% split basis.

- 4.2. Initial funding for the project feasibility study was secured from the West Yorkshire+ Transport Fund via its mandate approval by WYCA on 28th February 2014 and the programme's interim budget allocation was agreed on 13th June 2014.
- 4.3. Through securing this approval in December 2014 further funding of £198,000 has been allocated to develop the detailed design and specification for the scheme through to the next approval stage. However, in light of the requirement of a potential CPO process being required further funding for development will be sought from the Combined Authority early in the New Year.
- 4.4. It is very difficult to estimate the costs associated with the CPO process due to the number of third party variables over which the Council has no control. On the basis that there is likely to be a Public Inquiry, costs are likely to range for £80,000 to £160,000 for this aspect alone. This estimate of costs would cover surveyors, solicitors, barristers, land referencer's fees but does not cover any references to Lands Tribunal in respect of compensation. The lower cost estimate assumes that elements of the CPO process are undertaken in-house.
- 4.5. £1.96m of funding has been secured from Miller Homes via the Section 106 agreement for the residential development at Simpsons Green as the private developer contribution to the project. An allowance of £1.709m has been made to land assembly necessary to deliver the scheme, inclusive of CPO procedures, and given the timescale for delivery of the project some of this allocation may need to be funded by the Council for later reimbursement by the West Yorkshire+ Transport Fund through this third party contribution.
- 4.6. The staff resources and specialist technical services required to develop the scheme referred to in this report are funded through the scheme budget.

5. RISK MANAGEMENT AND GOVERNANCE ISSUES

- 5.1. Responsibility for the governance of this project is the responsibility of the West Yorkshire Combined Authority (WYCA) and is controlled under their Assurance Framework. A rigorous project management system is in place for all West Yorkshire+ Transport Fund projects based around the OGC PRINCE2 (Projects in Controlled Environments) and MSP (Managing Successful Programmes) methodologies. The scheme described in this report will be subject to these processes.
- 5.2. Entering into the CPO process offers the 'security' that the WY+TF requires ensuring a successful delivery of the project. Negotiations will continue in parallel to the CPO proceedings to ensure that where possible agreement is reached by private treaty outside of the CPO process.
- 5.3. Progression of a CPO would only occur after allowing an opportunity for any final negotiations. Ultimately however, the making of a CPO could be the only way to resolve the major area of uncertainty that could otherwise delay the proposed project programme.
- 5.4. The project programme key dates demonstrate that the scheme can be delivered even assuming an extended period for the CPO process to complete. However, it also shows that there may be risks to the project associated with a

CPO process becoming drawn out and extended. The additional delay and risk of this has been incorporated within the project's risk log and will be closely monitored throughout the processes associated with achieving the next approval stage approval.

6. LEGAL APPRAISAL

6.1. The Council should use a specific power of compulsory purchase where available rather than a more general power. It is possible that the Council could use those powers contained in the Town & Country Planning Act 1990 in respect of the general economic wellbeing of the area but, as this is a highways issue, the Highways Act powers are appropriate.

6.2. It has been pointed out that the use of compulsory purchase powers should be considered as a matter of last resort and that a compelling case in the public interest must be made out. Members are advised that acquisition by negotiation should continue and that the making of a resolution, or indeed the CPO itself does not require that these be discontinued. Circular 06/2004 states:

“Before embarking on compulsory purchase and throughout the preparation and procedural stages, an acquiring authority should seek to acquire land by negotiation where practicable. The compulsory purchase of land is intended as a last resort in the event that attempts to acquire by agreement fail. Acquiring authorities should nevertheless consider at what point the land they are seeking to acquire will be need and, as a contingency measure, should plan a compulsory purchase timetable at the same time as conducting negotiations. Given the time which needs to be allowed to complete the compulsory purchase process, it may be more often sensible for the acquiring authority to initiate the formal procedures in parallel with such negotiations”.

It is therefore legally correct (subject to other issues) to authorise a CPO while negotiations are proceeding.

7. OTHER IMPLICATIONS

7.1. EQUALITY & DIVERSITY

Due consideration has been given in writing this report to the Council's duties under Section 149 of the Equalities Act 2011.

The introduction of pedestrian facilities at this junction will improve the accessibility of the local area and will particularly benefit disabled people.

7.2. SUSTAINABILITY IMPLICATIONS

The improvement of this junction will support the future housing requirements for the District.

Improvements to the traffic flow on Harrogate Road will assist in reducing the level of harmful pollutant emissions from vehicles on this busy road and the A657 New Line.

Introduction of dedicated cycle facilities throughout the junction will assist in

encouraging greater use of cycling through on both the Harrogate Road and New Line corridors.

7.3. **GREENHOUSE GAS EMISSIONS**

Kerbside monitoring on Harrogate Road recorded an annual mean of 43 µg/m³ (concentration of air pollutant per cubic metre) which exceeds Government standards for particulate emissions.

Improvements to the traffic flow on Harrogate Road and New Line should reduce the level of CO₂ emissions from vehicles. A detailed assessment of the likely levels of savings resulting from the final proposal will be made as part of the formal approval submission to WYCA for the next authorisation stage.

7.4. **COMMUNITY SAFETY IMPLICATIONS**

The scheme will facilitate the introduction of safe pedestrian and cycling facilities on this corridor as well as improving street lighting and providing other environmental improvements. These will have a beneficial impact on Community Safety.

7.5. **HUMAN RIGHTS ACT**

The Human Rights Act 1998 places direct obligations on public bodies such as the Council to demonstrate that the use of compulsory purchase powers is in the public interest and that the use of such powers is proportionate to the ends being pursued.

It is acknowledged that the compulsory acquisition of the Order Land could amount to an interference with the human rights of those with an interest in the Land. These rights include those under Article 1 of the First Protocol of the European Convention on Human Rights ("ECHR") (which provides that every natural or legal person is entitled to peaceful enjoyment of his possessions) and Article 8 of the ECHR (which provides that everyone has the right to respect for his private and family life, his home and his correspondence).

In this instance the Council considers that there is a compelling case in the public interest for compulsory acquisition of the Order Land that should outweigh such rights, and therefore the use of compulsory purchase powers in this matter is proportionate. Without the use of these powers it is possible that all of the land necessary to deliver the scheme may not be available within a reasonable timescale, which would compromise the delivery of the junction improvement and the extensive benefits for both travellers and the local community that the scheme provides.

7.6. **TRADE UNION**

There are no Trade Union implications arising from this report.

7.7. **WARD IMPLICATIONS**

The scheme lies within the Idle & Thackley and Eccleshill wards. Members and the local community will be consulted as the scheme reaches appropriate stages

of development.

Where the council has been able to identify individual property owners it has made contact directly prior to the preparation of this report. Where the Council has currently been unable to identify property owners letter drops to individual properties have been made advising of the Council's intentions in relation to this scheme.

8. NOT FOR PUBLICATION DOCUMENTS

This report contains exempt information. Exempt information is included in Appendix 1, 3 and 4 and is not for publication. The exempt information is under the following category (identified in amended schedule 12A of the Local Government Act 1972):

S(3) Information relating to the financial or business affairs or a particular person including the authority holding the information.

9. OPTIONS

- 9.1. Executive could decide to continue to seek to negotiate the purchase of interests within the area that is the subject of the proposed Compulsory Purchase order without recourse to compulsory acquisition. Although the negotiations will continue, it may not be possible to reach agreements with all parties concerned within a timescale that fits in with the programme for the scheme, or to reach any agreement at all. The consequence would be that the scheme would be delayed, which would put the West Yorkshire+ Transport funding commitment at risk or that it may not be possible to deliver the scheme at all.

10. RECOMMENDATIONS

10.1. That the Executive resolve as follows:-

- a) To approve the use of the Council's Compulsory Purchase Powers to undertake the acquisition of land and property required for the Harrogate Road / New Line junction scheme.
- b) That a Compulsory Purchase Order be made under Section 239, 240, 246 and 250 of the Highways Act 1980 and the Acquisition of Land Act 1981 to be known as the City of Bradford Metropolitan District Council (Harrogate Road / New Line Junction Improvement Scheme) Compulsory Purchase Order 2016 for the compulsory purchase of land and rights required for the construction of the Harrogate Road / New Line junction scheme as shown on drawing no: R/M/MH/101463/CPO-1A (the 'Order Land') and associated works described in the Side Roads Order.
- c) That within the indicative land take identified on the drawing in 10.1(b) above, the detailed extent of land required by the CPO process is determined and authorised by the Strategic Director Regeneration.
- d) The Order be submitted to the Secretary of State for confirmation.

- e) The City Solicitor be authorised:
 - (i) To take all necessary action to secure the making, confirmation and implementation of the Order including publication and service of all relevant notices including the presentation of the Council's case at any public inquiry; and
 - (ii) To approve terms in consultation with the Strategic Director Regeneration for the acquisition of legal interests (including new rights) including those for the purpose of resolving any objection to the CPO.
- f) Note that in the meantime continuing efforts are being made to acquire the land by agreement to enable the Harrogate Road / New Line junction improvement to be progressed.

11. APPENDICES

- 11.1. **NOT FOR PUBLICATION:** Appendix 1 – Drawing No. R/M/MH/101463/CPO-1A, CPO Order Land
- 11.2. Appendix 2 – Drawing No. R/M/MH/101463/CPO-2A, Council Owned Land
- 11.3. **NOT FOR PUBLICATION:** Appendix 3 – Drawing No. R/M/MH/101463/CPO-3A, Compulsory Purchase Order Land to be Acquired.
- 11.4. **NOT FOR PUBLICATION:** Appendix 4 – Schedule of Ownerships

12. BACKGROUND DOCUMENTS

- 12.1. Scheme File – 102581
- 12.2. West Yorkshire Combined Authority Gateway 1 submission – Harrogate Road / New Line Junction
- 12.3. Report to Executive 2 October 2012 - West Yorkshire+ Transport Fund
- 12.4. Report to Council 10 October 2012 – West Yorkshire+ Transport Fund
- 12.5. Report to Executive 5 March 2013 – West Yorkshire+ Transport Fund
- 12.6. Report to Council 18 March 2013 – West Yorkshire+ Transport Fund
- 12.7. Report to Executive 15 January 2015 – West Yorkshire+ Transport Fund, Harrogate Road / New Line junction