

## **Cabinet**

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**Date of Meeting:** 12 June 2018

**Report Title:** Middlewich Eastern Bypass – Planning and Delivery Update

**Portfolio Holder:** Cllr Don Stockton, Environment Portfolio

**Senior Officer:** Frank Jordan, Executive Director for Place

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### **1. Report Summary**

- 1.1. This report seeks approval for the Executive Director of Place to undertake all necessary and prudent preparatory works in advance of the final funding decision in order to ensure the Council is positioned to deliver the Scheme once the final funding decision has been made.

### **2. Recommendation**

- 2.1. That Cabinet authorises the Executive Director of Place in consultation with the Portfolio Holder for the Environment to exercise powers delegated to the Executive Director of Place to take all necessary and prudent preparatory works in advance of the final funding decision, at risk, in order to ensure the Council is positioned to deliver the Scheme if a favourable funding decision is received.

### **3. Reasons for Recommendation**

- 3.1. The land acquisition process would enable the Council to proceed with the development and delivery of the scheme.
- 3.2. There is considerable local public support for the proposals, as demonstrated by the Middlewich Transport Consultation (September 2016). Through this consultation, 79% of respondents stated that there are severe issues affecting roads in Middlewich. When asked about priorities for improving transport, the top priority for respondents was building a bypass.
- 3.3. The scheme is consistent with the Cheshire & Warrington Strategic Economic Plan and is a key element of the HS2 Growth Strategy for the Constellation Partnership.
- 3.4. It is also embedded in the newly adopted Local Plan for Cheshire East.

#### **4. Other Options Considered**

- 4.1. The various options for the bypass which were assessed informed the recommendation of the preferred option, as approved at Cabinet in September 2017.
- 4.2. Consideration has been given to delaying the submission of a planning application. It is considered that this approach would put key project milestones at risk resulting in delayed opening of the road. Meanwhile, construction cost inflation could expose the Council to further financial risks as the local funding contribution would be expected to meet these additional costs.
- 4.3. The Council has commenced negotiations with affected landowners in accordance with the Department of Communities & Local Government Guidance on Compulsory Purchase dated October 2015. However, voluntary acquisitions may not be concluded with all affected parties and for all land title issues to be dealt with by agreement within the funding window for the scheme. Accordingly, the authorisation of compulsory purchase action is sought at this stage to maintain the project programme and to demonstrate the Council's intent, subject to a resolution to grant planning permission by the Strategic Planning Board, to proceed with the scheme.

#### **5. Background**

- 5.1. The aim of the Middlewich Eastern Bypass scheme is to relieve traffic congestion in Middlewich town centre and enable access to the strategic employment sites.
- 5.2. The scheme will therefore support the economic growth agenda of the Council by facilitating the delivery of 1,950 new houses and 6,500 additional jobs in Middlewich.
- 5.3. At the meeting on 12 September 2017, Cabinet resolved to prepare a planning application for the Preferred Route option. Following the Cabinet resolution in September, the Council has progressed a wide range of technical work to prepare for submission of a planning application, including;
  - Detailed designs for the highway
  - Environmental surveys, impact assessments and proposed mitigation plans
  - Production of a transport assessment
  - Flood risk assessments and development of a drainage strategy
  - Geotechnical and ground condition studies

- Engagement with Network Rail, Environmental Agency and the Canals & Rivers Trust
  - Pre-application discussions with Cheshire East and Cheshire West & Chester Council planning officers
  - Engagement with affected landholders and occupiers
- 5.4. To meet the programme for the scheme the Council will need to undertake early negotiations with affected land owners to secure that land required for the scheme by way of early acquisitions.
- 5.5. Acquiring authorities must demonstrate that every effort should be made to acquire the necessary land interests by agreement with the effected parties and that compulsory acquisition is a last resort. The Council has appointed Sanderson Weatherall (chartered surveyors) to undertake this work. However, voluntary acquisitions of all of the land affected and rights required may not be possible within the funding window for this scheme.
- 5.6. Whilst acquisition by agreement will be pursued, initiating the CPO process over the entire land holding required for the scheme offers greater certainty, should parallel negotiations to acquire the land and rights voluntarily not be successful.
- 5.7. The scheme will require the acquisition of the freehold title to approximately 12 hectares of land (or thereabouts). In addition, a further 30 hectares (approximately) of land is expected to be subject to new rights, licenses or consents as part of the environmental mitigation scheme associated with the proposals. The plans to accompany the CPO are not yet available so a plan of the general alignment of the road and these extent of associated environment measures is included as Appendix A to this report.
- 5.8. Some of the areas over which freehold title is to be acquired may not be required for the permanent works and may be sold back to the current owners at Open Market Value along with the payment of compensation in due course.
- 5.9. The Side Roads Order (SRO) will authorise the stopping-up, diversion and creation of new lengths of highway or reclassification of existing highways and the Compulsory Purchase Order (CPO) will include land that is required to enable the works authorised by the SRO to be carried out.
- 5.10. In addition, the SRO will make provision for the stopping-up of private means of access to premises and agricultural land, as necessary, and the CPO makes provision for the acquisition of land and new rights to enable new, replacement private means of access to be provided as part of the scheme.

5.11. The land proposed to be acquired is the minimum considered to be required to achieve the preferred design option, subject to matters that are currently unresolved pending further design work, as follows. Firstly, the locations for working compounds and attenuation ponds have not yet been confirmed and will be selected for inclusion in the CPO in due course. Secondly, discussions are proceeding with the Statutory Undertakers and these may disclose additional requirements for service diversions for which land or rights may require to be obtained under the CPO. These amendments may be made by the Executive Director of Place in consultation with the Director of Legal Services subject to adoption of the recommendations in this report.

## **6. Implications of the Recommendations**

### **6.1. Legal Implications**

6.1.1. In resolving to make a Compulsory Purchase Order and a Street Works Order for the Scheme the Council would be proceeding under its powers under the Highways Act 1980 for the compulsory purchase of land. The rights require together with improvements, stopping up of roads and replacement of private means of access.

6.1.2. A compulsory purchase order should only be made where there is a compelling case in the public interest which is covered in the body of the report with supporting documents and the land proposed to be acquired must be the minimum considered to be reasonably required to achieve the selected design option.

6.1.3. The acquiring authority should provide substantive information as to the sources of funding available for both acquiring the land and implementing the scheme for which the land is required

6.1.4. The acquiring authority will also need to be able to show that the scheme is unlikely to be blocked by any physical or legal impediments to implementation including any need for planning permission or other consent or licence

### **6.2. Finance Implications**

6.2.1. The implications of these recommendations will draw down allocated funds within the Council's capital budget. Following consideration by the Portfolio Holder for Finance and Communications at a meeting on 15<sup>th</sup> May 2018, the FY18-19 Budget for Middlewich Eastern Bypass has been approved to release sufficient funds in this financial year to meet forecast expenditure of £2.9 million. This funding is necessary to enable the project to proceed, on programme, during this financial year.

6.2.2. A detailed cost estimate has been prepared using specialist engineering and property consultants. The following table summarises the main cost elements for the scheme (preferred option). No prior expenditure is included in these values, which should be considered cost estimates to completion from 1st April 2017.

| <b>Scheme Element</b>                | <b>Estimated Outturn Costs<br/>(2017 Q1 prices)</b> |
|--------------------------------------|---|
| Construction incl. Preliminary works | £33.10m   |
| Site supervision costs               | £2.03m  |
| Land acquisition & Part 1 Claims     | £5.30m  |
| Statutory utilities                  | £0.75m  |
| Design fees                          | £5.33m  |
| Inflation allowance                  | £4.24m  |
| Risk Allowance                       | £7.73m  |
| <b>Total</b>                         | <b>£58.48m</b>                                      |

6.2.3. The programme maximises reliance on local funding sources, referred to as the Local Contribution, from both Cheshire East Council and third party (developer) sources. To ensure that these funding sources are viable and to avoid adversely impacting on future development, the local funding contribution was set at 20% of total scheme costs. Therefore, the funding mix, as endorsed by Cabinet in April 2017, is as follows;

| <b>Funding Source</b>     | <b>Value £<br/>(2017 Q1 prices)</b> |
|---------------------------|-------------------------------------|
| DfT Grant                 | £46.78m                             |
| Local Contribution        | £11.70m                             |
| <b>Total scheme costs</b> | <b>£58.48m</b>                      |

6.2.4. At this stage, third party contributions are estimated based upon committed or current S106 developer agreements (or equivalent). Over time, the proportion of third party funding is likely to change in response to development activity within the local area. For this reason, the local funding contribution is presented as a combination of both Council and Third party funding. Any change in either element will have a direct impact on the funding obligation arising from the other source.

6.2.5. In September 2017, it was agreed that the Council would continue to seek alternative funding sources including developer contributions, which could be used to replace its contribution whilst ensuring a maximum local contribution of £11.7million. This approach will be retained, ensuring that any call on Council resources is minimised.

6.2.6. The project budget includes an estimate for the costs associated with the CPO process including a public inquiry. This estimate allows for the costs of surveyors / lawyers / barristers / land referencing fees but would exclude any references to the Lands Tribunal in respect of compensation. The costs associated with Lands Tribunal for compensation are dependant upon the number and complexity of claims and the project budget includes a contingency for this.

### **6.3. Policy Implications**

6.3.1. The need for the scheme is clearly established in the Cheshire East Local Plan Strategy, identifying from the outset the need to improve transport connections to deliver the Plan, including the proposed Middlewich Eastern Bypass.

6.3.2. By providing additional highway capacity to cater for additional traffic from development, the scheme would support the Local Plan Strategy and the objectives of the Constellation Partnership. The scheme is

thus considered to be in line with local policy and essential for the delivery of the future economic growth plans of Cheshire East.

#### **6.4. Equality Implications**

- 6.4.1. All public sector acquiring authorities are bound by the Public Sector Equality Duty as set out in section 149 of the Equality Act 2010. In exercising their compulsory purchase and related powers (eg powers of entry) these acquiring authorities must have regard to the effect of any differential impacts on groups with protected characteristics.
- 6.4.2. Equality implications have been considered in the options appraisal and are incorporated into the Outline Business Case. An Equalities Impact Assessment will be prepared to accompany the planning application for the scheme.
- 6.4.3. In progressing the Orders and carrying out consultations the Council will take into account the needs of persons with protected characteristics as set out in equalities legislation

#### **6.5. Human Rights Implications**

- 6.5.1. In deciding whether to proceed with compulsory purchase Members will need to consider the Human Rights Act 1998 and Article 1 of the First Protocol and Article 8 to the European Convention on Human Rights.
- 6.5.2. Article 1 protects the rights of everyone to the peaceful enjoyment of their possessions. No person can be deprived of their possessions except in the public interest and subject to national and international law.
- 6.5.3. Article 8 protects private and family life, the home and correspondence. No public authority can interfere with this interest except if it is in accordance with the law and is necessary in the interests of national security, public safety or the economic well-being of the country.
- 6.5.4. Members will need to balance whether the exercise of these powers are compatible with the European Convention on Human Rights. In weighing up the issues it is considered that there is a compelling case in the public interest for the acquisition of land which will bring benefits to the residents and businesses that could not be achieved by agreement and this outweighs the loss that will be suffered by existing landowners. The CPO and the SRO will follow existing legislative procedures.

6.5.5. All parties have the right to object to the CPO and attend a public inquiry arranged by the Secretary of State. Parties not included in the CPO may be afforded that right if the inquiry inspector agrees. The decision of the Secretary of State can be challenged in the High Court, an independent tribunal, for legal defects. Those whose land is acquired will receive compensation based on the Land Compensation Code and should the quantum of compensation be in dispute the matter can be referred to the Upper Tribunal (Lands Chamber) for independent and impartial adjudication.

6.5.6. The Courts have held that this framework complies with the Convention on Human Rights. Accordingly, a decision to proceed with the recommendation on the basis that there is a compelling case in the public interest would be compatible with the Human Rights Act 1998.

## **6.6. Human Resources Implications**

6.6.1. It shall be necessary to ensure that sufficient resource is allocated in Assets, Highways, Legal, and Planning Services to support delivery of the scheme. If additional temporary resources are required these will be met from the project budget.

## **6.7. Risk Management Implications**

6.7.1. Key risks to the Council continue to relate to the affordability of the scheme and this will be addressed through the continued development of the funding strategy.

6.7.2. The Council will be required to accept all responsibility for cost increases beyond the cost envelope stated in the Business Case that is approved for funding by DfT. This decision is at the Full Business Case stage, which is currently anticipated in late 2019.

6.7.3. Risk management issues are unchanged from previous Cabinet reports. A risk register has been produced in the preceding stages of the project development and this will be reviewed and updated through the current stage of works. Capital cost risks are informed by a comprehensive Quantitative Risk Assessment, with a risk allowance of £7.7million included in the scheme costs. For appraisal purposes, a level of Optimism Bias is applied to uplift estimated costs by 44%, in accordance with DfT guidance, to ensure that the value-for-money of the scheme is not overstated.

- 6.7.4. This scheme is close to the Cheshire Brine Compensation Board area and as such will need to be subject to additional Ground Investigations works than are typical for a scheme of this nature.
- 6.7.5. Progressing a CPO would be preceded by an offer of voluntary negotiations to acquire by agreement which could continue during the CPO process. Ultimately, however, the making of a CPO could be the only way to resolve the major area of uncertainty that could otherwise delay the projects programme.
- 6.7.6. Entering into the CPO process offers the assurance that the Local Plan site allocations can be delivered.
- 6.7.7. The Council can notify the Secretary of State that it no longer wishes to use its CPO powers in respect of any interest and request the Secretary of State not to confirm the CPO over those interests at any time if negotiations are successful or if the Council considers the financial risk too great.
- 6.7.8. A major risk for any highway scheme is land assembly and any substantive delay to this is likely to adversely impact on the project program to include submission of the planning application and the start of construction. In order to mitigate this risk, it has been identified that external legal support needs to be procured immediately to support the land assembly and Compulsory Purchase strategy.
- 6.7.9. The Council will ensure that there is a budget for costs associated with any early acquisitions, including payment of professional fees incurred by affected land owners, required to meet the program for starting construction. Where possible, the Council shall enter into option agreements to acquire land to mitigate the costs associated with early acquisitions.
- 6.7.10. Robust governance arrangements for the scheme have been operating within the Strategic Infrastructure project management framework and a risk register and issues log are in place, which include monitoring and effective control of identified risks and issues.
- 6.7.11. The assumed funding from Section 106 agreements is not all secured so there remains a funding risk. Mitigation of this risk is underway via close working with the planning team and negotiations with developers to ensure that sufficient contribution will be secured. There is also a risk of contributions not coming forward even though they have been secured in s106 Planning Obligations.

## **6.8. Rural Communities Implications**

6.8.1. The planning application will provide a comprehensive Environmental Assessment which will take into account the effect on the rural community. This assessment will include impacts such as noise, air quality, visual impact plus the schemes effects of Public Rights of Way and Non-motorised users i.e. pedestrians, cyclists and equestrians.

## **6.9. Implications for Children & Young People**

6.9.1. No specific implications have been identified at this stage. Opportunities to engage with local schools will be considered as the scheme progresses. The means by which young people can be encouraged to participate in the consultation process will be considered as part of the Consultation & Engagement Plan.

## **6.10. Public Health Implications**

6.10.1. The recommendations have no immediate impact on public health. Issues associated with noise and air quality will be assessed as part of the programme of works associated with preparing an Environmental Assessment to accompany the planning application.

6.10.2. All on-site ground investigation works will be planned and completed with reference to a comprehensive Risk Assessment and Mitigation Strategy, which will take full account of potential impacts on residents, road users and the general public.

6.10.3. The scheme will have environmental benefits, through reducing traffic congestion, improving travel times and reliability and encouraging multi modal forms of transport such as cycling and walking.

## **7. Ward Members Affected**

7.1. Middlewich and Brereton Rural wards are affected;

- Cllr Simon McGrory
- Cllr Michael Parsons
- Cllr Bernice Walmsley
- Cllr John Wray

7.2 In addition, the project team have provided periodic updates to both Middlewich Town Council and Moston Parish Council during development of the proposals.

## **8. Consultation & Engagement**

8.1. Public consultation on the Preferred Option for the scheme has taken place between 19<sup>th</sup> March and 29<sup>th</sup> April 2018. A comprehensive report on the outcomes of this consultation has been prepared to support both the Planning Application and the Full Business Case to Government.

## **9. Access to Information**

9.1. The background papers relating to this report can be inspected by contacting the report writer.

## **10. Contact Information**

10.1. Any questions relating to this report should be directed to the following officer:

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