

## OFFICER DECISION RECORD (ODR2)

This form records an officer decision and is published in accordance with the Openness of Local Government Bodies Regulations 2014

**Middlewich Eastern Bypass (“MEB”) Land Assembly**

**Land at Kinderton Lodge Farm, Pochin Way, Middlewich**

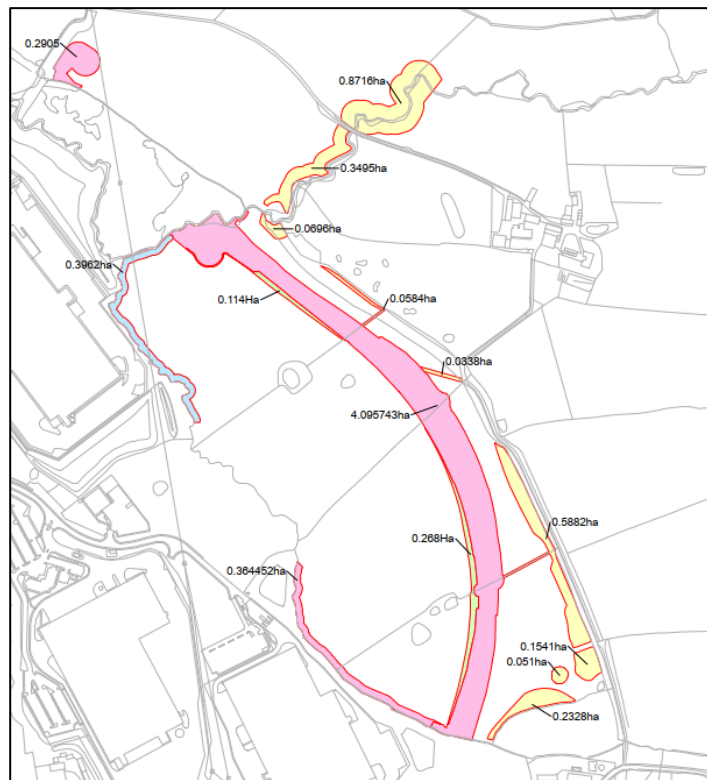
**(Inclusive of Plots 14, 15, 15a, 15b, 15c, 15d, 15e, 15f, 15g, 15h, 15j, 15k, 15m, 15n, 15o, 15p, 15q, 15r, 15s, 16, 16a, 16b, 19, 20, 21, 23, 24 and 25**

<b>Date of Decision</b>	<b>5 February 2024</b>
<b>Decision Taker (including Job Title)</b>	Joanne Jones, Interim Head of Estates
<b>Specific Delegation</b>	<p>This record relates to an officer decision taken under:-</p> <p>The Council’s Highways and Transport Committee Decision dated 9 December 2021 which authorised the Head of Estates to (inter alia):</p> <ol style="list-style-type: none"><li>1) Negotiate and agree terms to seek to acquire the land and rights (or extinguish the same) required for the Scheme by agreement and to instruct the Director of Governance and Compliance to negotiate and enter into the legal agreements necessary to facilitate any such agreements</li><li>2) Negotiate and approve the payment of any 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 Scheme and to negotiate, approve and document by way of settlement or other legal agreement payment of all related compensation claims in advancing the development or implementation of the Scheme, including the advance payment of compensation pursuant to Section 52 of the</li></ol>

	Land Compensation Act 1973 and the settlement of any claims made pursuant to Part 1 of the Land Compensation Act 1973.
<b>Brief Description of Decision</b>	<p>To seek approval for the Director of Governance &amp; Compliance to:-</p> <ol style="list-style-type: none"> <li>1) purchase the land known as Land at Kinderton Lodge Farm, Middlewich (as shaded pink on Plan 1); and</li> <li>2) authorise the Council to enter into a Contracted-Out Lease for working areas on adjoining land (as shaded green on Plan 1); and</li> <li>3) authorise the Council to enter into a Deed of easement for ecology mitigation works on adjoining land (as blue green on Plan 1); and</li> <li>4) enter into any ancillary agreements in connection with the acquisition or use of land in advance of a compulsory purchase order and pay all sums due in respect of compensatable interests to the landowner and the reasonable and proper professional fees applicable to the acquisition, on terms and conditions to be agreed by the Head of Estates and the Director of Governance &amp; Compliance.</li> </ol> <p>In relation to the environmental mitigation land:-</p> <ol style="list-style-type: none"> <li>1) to authorise the Director of Highways to enter into an agreement under Section 253 Highways Act 1980 that provides for the management of the ecological mitigation areas on further adjoining land (as shaded yellow on Plan 1).</li> </ol>
<b>Reasons for the Decision and alternatives considered.</b>	<p>The Property provides a combination of agricultural land largely allocated for employment uses under Strategic Local Plan Site 44 (Midpoint 18) and land allocated as Open Countryside. The land required for the Scheme is summarised as follows:</p> <ul style="list-style-type: none"> <li>• The permanent land requirements extend to approximately 11.74 acres (4.75 hectares) as shown shaded pink on “Plan 1”, attached at Appendix 1 (“the Property”).</li> <li>• The new rights land requirements extend to approximately 0.99 acres (0.40 hectares) as shown shaded blue on “Plan 1”.</li> </ul>

- The land management agreement (ecology mitigation works) area extends to approximately 5.91 acres (2.39 hectares) as show shaded yellow on Plan 1).
- The temporary occupation requirements extend to approximately 0.94 acres (0.38 hectares) as shown shaded green on Plan 1.

The Plots are illustrated on the following plan:



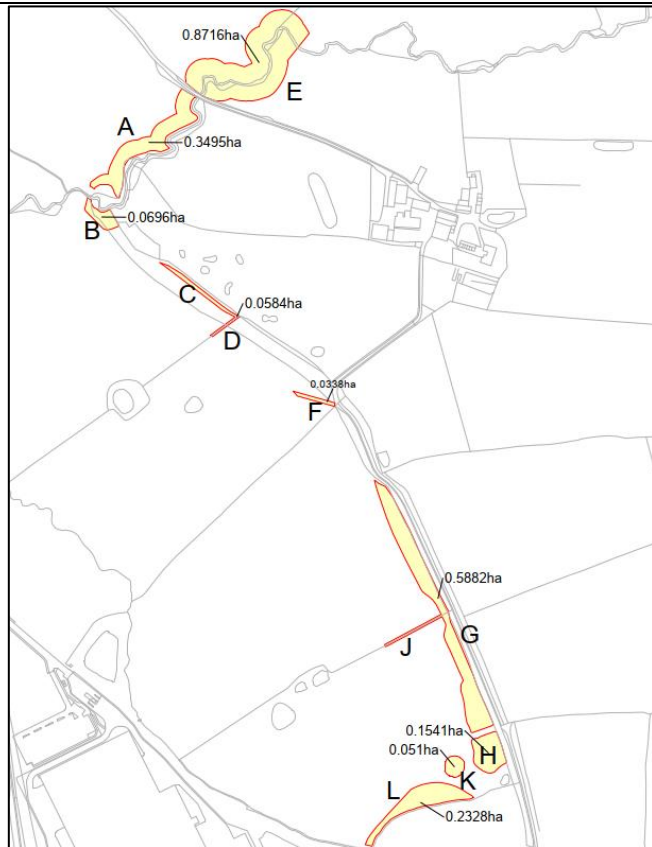
Not to scale

Permanent Land Take (shaded pink)

The most northern permanent land take provides agricultural land extending to approximately 0.72 acres (0.29 hectares) and is located to the northern part of the Claimant’s land holding. This plot has a planning allocation as Open Countryside. It is required for a permanent attenuation pond.

The second permanent land take is a long strip of land which provides grazed pastureland land extending to approximately 10.12 acres (4.1 hectares). All this land take is subject to an employment planning allocation. It is required for the main carriageway construction, landscaping

	<p>works and an attenuation pond. The land to the west of this permanent land take is currently subject to development for a large industrial / logistics building.</p> <p>There is a further strip of land which forms the banks of the River Croco Tributary extending to approximately 0.99 acres (0.36 hectares). This land is required for ecological mitigation works</p> <p><u>Temporary Land Takes (shaded green on Plan 1)</u></p> <p>Temporary occupations are required adjacent to the permanent land required for the route of the Bypass for working areas.</p> <p>It has been agreed the temporary occupation for working areas (shaded green on Plan 1) will be acquired via a contracted-out lease. The lease will endure a period of 3.5 years which an option to extend for a further year should it be required for the construction of the Scheme.</p> <p><u>Ecological Mitigation Land (shaded yellow)</u></p> <p>As part of the planning application requirements regarding Biodiversity Net Gain, the Scheme will require ecological mitigation features to be installed away from the highway and for these to be managed and maintained for a period of 25 years. The Council will install the ecological measures and undertake the management for the first 5 years. After the initial 5 years, the Claimant has agreed to manage for the remaining 20 years under a Section 253 of the Highways Act 1980 agreement. Whilst this will be a transaction for the Highways department to agree, we have provided details of this land for context.</p> <p>The below reference plan shows the ecological mitigation areas.</p>
--	---



Not to scale

Plot A comprises of 0.35 hectares (0.86 acres) of agricultural pastureland. This plot is to be used for the installation of native woodland.

Plot B comprises of 0.07 hectares (0.17 acres) of grass covered / wooded land. This plot is required for the installation of native woodland.

Plot C comprises of 0.05 hectares (0.12 acres) of grass covered land at the field edge. This plot is required for the installation of native shrubs.

Plots D, F and J are required for hedgerow strengthening. These plots forms part of the agricultural pastureland.

Plot E comprises of 0.87 hectares (2.15 acres) of land surrounding a tributary of the River Croco. This plot is required for the installation of Bat and Bird boxes and Kingfisher tunnels. The ecological mitigation features will not cover the whole of the area shown on the plan.

Plot G and H comprises of 0.73 hectares (1.8 acres) of agricultural pastureland at the field edge. These

	<p>plots are required for the installation of native woodland.</p> <p>Plot K comprises of 0.05 hectares (0.12 acres) of agricultural pastureland. This plot is required for the installation of a Lesser Silver Water Beetle Pond with marshy grassland around the perimeter.</p> <p>Plot L comprises of 0.23 hectares (0.57 acres) of agricultural pastureland. This plot is required for the installation of linear belts of trees and shrubs.</p> <p>All plots, with the exception of Plots A and E, have an employment planning allocation with the Local Plan as part of Midpoint 18. Plots A and E have an allocation of open countryside.</p> <p>All ecological mitigation measures will be monitored by the Council to ensure compliance with their planning conditions.</p> <p>Acquiring authorities are advised that every effort should be made to acquire the necessary land interests by agreement and compulsory acquisition should be a last resort. As the Council requires the Property to deliver the Scheme, the Claimant has been engaged in negotiations and this acquisition (temporary and permanent bases) will secure a series of key land parcels through voluntary agreement.</p> <p><b>Land Budget</b></p> <p>The current land budget for the Scheme has been prepared on the basis that the Property is acquired as a permanent land take.</p> <p>As part of normal business within the Council role designations change, the Head of Highways and Infrastructure now has the responsibilities of the Head of Highways.</p> <p><b>Other Matters</b></p> <p>The agreement with the Claimant includes provision for the Council to have early access to the Property for surveys and site clearance works. If this agreement is not contracted, it will not be possible to undertake the advance ecological</p>
--	--

clearance works on this key land parcel. This is likely to delay the Scheme by 6 to 12 months.

### **FINANCIAL IMPLICATIONS**

The level of compensation has been agreed with the Claimant and is supported by a valuation report undertaken by a RICS Registered Valuer and a member of the Compulsory Purchase Association. This confirms that the acquisition has been agreed in accordance with the Compensation Code and having regard to Market Values.

There will also be legal and surveyor costs incurred by the Council and Land Registry fees which will be confirmed prior to completion of the acquisition.

It has been agreed that the above compensation is an agreed full and final settlement with the exception of a Part 1 Claim associated with the farmhouse on the basis this can only reasonably be assessed once the Scheme is complete and open to traffic.

### **Timing of Payments**

A deposit will be payable on exchange of contracts. This is equivalent to 10% of the agreed compensation package and is refundable if the Department for Transport funding for the Scheme is not forthcoming.

The balance of the compensation package is payable on completion of the purchase, only after the Department for Transport funding for the Scheme is confirmed.

There will be no Stamp Duty Land Tax liability until completion of the purchase.

### **RISK MANAGEMENT**

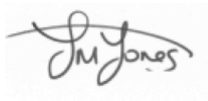



The main risk associated with an acquisition of the Property relates to whether the Scheme will be delivered. We have agreed that the acquisition will be on a conditional basis with the conditionality being full business case approval and release of funds by the Department for Transport in relation to the Scheme's grant. Therefore, the risks from a financial aspect are minimal. Should the Scheme

	<p>not proceed, abortive costs will be incurred such as covering professional fees.</p> <p><u>Ecological Mitigation</u></p> <p>A large part of the land requirement from this Claimant relates to Land Management Agreements for Ecological Mitigation. Ecological Mitigation measures are required as part of the Biodiversity Net Gain requirements attached to planning permissions. These mitigation measures are subject to 25 years of management and monitoring as part of the planning conditions.</p> <p>By making a voluntary agreement with the Claimant, they have agreed to undertake the management of these areas as part of the agreed compensation.</p> <p><u>Market Uncertainty</u></p> <p>The Council's land agents have advised there is currently market uncertainty. This has impacted financial markets and property values. At the date of valuation, there was sufficient market evidence to support the agreed compensation stated above. However, land and property values may reduce in the future. There is currently no evidence to support a reduction in values below the rates agreed with the Claimant.</p> <p><b>SUPPORTING DOCUMENTS:</b></p> <p>Appendix 1 – Plan 1 – Composite Land Take Plan Appendix 2 – Committee Paper</p>
<b>Member consultation and interests declared.</b>	Members have been kept up-to-date of the Scheme.
<b>Significant Decision</b>	No
<b>Legal Implications</b>	I am satisfied that on the basis of the documentation provided, the recommended option is supportable noting that the decision taker has verified compliance with the terms of achieving best consideration for the acquisition of the freehold Property and provided a valuation report of the Property to support the decision.



	<p>This land is required for the MEB scheme. It is used as agricultural land, the tenure is freehold and forms part of a Farm.</p> <p>Permanent acquisition is proposed for the construction of the highway spine (shown shaded pink on the plan). Temporary acquisition by grant of a lease for a site compound (shaded green) and for areas where environmental mitigation will be carried out (shaded yellow).</p> <p>The permanent acquisition cost and payment for injurious affection is significant and is set out in the report prepared by Sanderson Weatherall in the Recommendation at Part 2. The transfer is conditional on the Middlewich Eastern Bypass Compulsory Purchase Order being confirmed without challenge by the Minister (such confirmation received on 6 June 2023) and the approval of a funding package from the Department for Transport following final business case approval.</p> <p>The highway alignment runs through land subject to an option for use as employment land, which affects the valuation and price.</p> <p>The site compound will be used for around 3.5 years during construction and will be subject to a lease.</p> <p>The environmental mitigation land will be laid out by the scheme contractors but an agreement is proposed between Director of Highways and the owner to return this land and for the owner to maintain the landscaping for a period of 25 years. This ODR also seeks approval to enter into that agreement.</p> <p>The valuation report mentioned above refers to environmental matters. There was an onsite inspection on 14 October 2022. The report states, <i>inter alia</i>,</p> <p>“Our inspection was of a limited visual nature and we cannot give any assurances that previous uses on the site or in the surrounding areas have not contaminated subsoils or groundwaters.....</p>
--	--

	<p>legal advisers should take up the usual enquiries on your behalf, in respect of possible contamination or environmental issues, prior to entering into any commitments. “</p> <p>External legal advice is being taken in relation to the acquisition and the searches and investigations that need to be carried out during the transaction. This will be monitored by the scheme surveyors with reporting back to the Head of Legal.</p> <p>The Transaction will require Transfers, Leases and early access agreements for further pre- completion surveys. These legal agreements are necessary for the scheme to proceed.</p> <p>An underpass will be provided to link two parcels of remaining land, which will be maintained by the Highway Authority following completion.</p> <p>Louise Carrington, Property Solicitor, 25.1.2024</p>
<p><b>Financial Implications</b></p>	<p>I am satisfied that the recommended decision is supportable. The land has been valued at the current value by a RICS qualified valuer. The purchase of the land is required for the Middlewich Eastern Bypass project that is currently approved in the 2023/27 MTFS.</p> <p>The purchase of the land will or can only proceed once the Council has received confirmation that the Full Business Case have been accepted by the Department of Transport which will ensure that the grant funding for the scheme had been secured. The sum will be come due once the contract is signed is refundable by the Landowner if the project does not continue.</p> <p>Sam Oakden – Finance Manager – Strategic Finance &amp; Accounting 01/02/2024</p>
<p><b>Confidential/Exempt Information</b></p>	<p>Yes</p>
<p><b>Background Papers</b></p>	<p>Appendix 1 – Committee Decision Appendix 2 – Plan 1</p>

<b>Signed:</b> <i>Head of Estates</i>	 Joanne Jones
<b>Signed:</b> <i>Ex Dir Place</i>	 Peter Skates
<b>Signed:</b> <i>Deputy Chief Finance Officer</i>	 Paul Goodwin
<b>Signed:</b> <i>Director of Highways and Infrastructure</i>	 Thomas Moody