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## **Highways and Transport Committee**

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**Date of Meeting:** 9 December 2021

**Report Title:** Middlewich Eastern Bypass - to authorise the making of a Compulsory Purchase Order, Side Roads Order and Bridge Scheme for the delivery of the Middlewich Eastern Bypass Scheme

**Report of:** Jayne Traverse, Executive Director of Place  
David Brown, Director of Governance and Compliance

**Report Reference No:** HT/38/21-22

**Ward(s) Affected:** Middlewich and Brereton Wards

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### **1. Executive Summary**

- 1.1. The Council has set out a clear vision and strategy for sustainable economic growth in the adopted Local Plan. A key element of this strategy is a significant investment programme in transport to support housing and jobs in the Borough.
- 1.2. The Middlewich Eastern Bypass (“the Scheme”) will deliver an improved highway network for Middlewich to relieve congestion and road safety concerns in Middlewich town centre, improve journey times on the wider highway network and will assist with the development of LPS 44 (Midpoint 18). The Scheme will support economic growth, employment and housing delivery in the town and the surrounding area.
- 1.3. The Scheme is a two-way 10m wide single carriageway road scheme from a new roundabout junction off Pochin Way to the north, to a new roundabout junction to the southern end where it ties in with the A533 Booth Lane. Booth Lane will be realigned to connect with the Scheme and it will include a new bridge over the

Trent and Mersey Canal and a new bridge over the Sandbach to Northwich Railway Line. It will create a total of 2.6km of new roads with street lighting and dual use footways and cycleways with appropriate crossing points to ensure safe crossing facilities. As part of the Scheme it will be necessary to alter private means of access to properties, with the closure of the current access and a new access being created.

- 1.4. The current programme is for the main works to start in late 2023, with an estimated 22-month construction period.
- 1.5. The Council's overall expenditure on the Scheme is expected to be £74m, including an approved budget of £1.8m for development of the Outline Business Case, which predates the current Scheme.
- 1.6. The Council's Medium-Term Financial Strategy, as reported to Cabinet in February 2021, makes provision for this expenditure, where £25.5m is included in the approved Capital Programme and £48.5m in the Addendum, pending completion of the Full Business Case and approval from the Department of Transport Local Majors grant funding approval to the value of £46.78m.
- 1.7. Cabinet Members have been previously made aware of the proposed Scheme as their approval was sought to develop the Scheme further which included the assessment of the extent of land required, the financial costs and implications to the Council of the Scheme including the requirement to forward fund the Scheme until the submission of the Full Business Case to the Department for Transport.
- 1.8. At the meeting of 15 January 2019, Cabinet at recommendation 2.1 "noted that the Executive Director of Place will in accordance with the approved processes, draw down on the budget allocation within the Capital Programme Addendum in order to deliver the Scheme "it is now necessary to clarify this with an additional recommendation in that the Committee notes the ongoing requirement to forward fund expenditure on the Scheme in lieu of external contributions. And notes that this presents financial risks as outlined in the financial implications of the report.
- 1.9. Following the Cabinet's approval, a Compulsory Purchase Order and Side Roads Order were made, sealed and published in June 2021. Following the publication of the orders it was noted that the orders did not include a bridge scheme to allow a highway bridge to be constructed over the Trent and Mersey Canal and other issues were found with the made Orders, therefore the Scheme as had previously been presented to the Cabinet would not achieve the ambition of the Council, the orders were authorised to be withdrawn by the Highways and Transport Committee on 21 September 2021.
- 1.10. Accordingly, it is now necessary to seek the Committee's authorisation to consider the use of compulsory purchase powers to acquire the land and new

rights required for the construction of the Scheme, and to make The Cheshire East Council (A533 Middlewich Eastern Bypass) Compulsory Purchase Order 2022 (“the CPO”). This will be in parallel with negotiations to acquire the land and new rights required by agreement, reflecting the land requirement that has now being established as necessary to deliver the Scheme.

- 1.11. In order to bring the Scheme forwards and to make the necessary changes to the existing highway network and to alter private means of access to adjacent premises, it is necessary to make The Cheshire East Borough Council (A533 Middlewich Eastern Bypass) (Classified Road) (Side Roads) Order 2022 (“the SRO”).
- 1.12. The Scheme includes a new bridge over the Trent and Mersey canal which is a navigable waterway. Where a bridge is to be constructed over a navigable waterway, it should be authorised by a specific Bridge Scheme pursuant to section 106 of the Highways Act 1980 (as amended) to ensure that there is no impact on the navigation rights of the users. Authorisation is therefore sought to make The Cheshire East Council (A533 Middlewich Eastern Bypass -Trent and Mersey Canal Bridge) Scheme 2022 (“the Bridge Scheme).
- 1.13. This report details the affected landowners and plots required to deliver the Scheme, with such further detail allowing the Council to make a fully informed decision on the proper consideration of the use of powers of compulsory purchase.
- 1.14. The Council has initiated discussions and will continue to seek to negotiate the acquisition of all the legal interests in the land required for the construction of the Scheme by agreement. However, the Council needs to ensure it has the ability to use compulsory purchase powers if it considers that it may not be possible to agree terms for the acquisition of all the remaining interests in the land required to allow the Scheme to come forwards. The use of such powers would be as a matter of last resort and would be in parallel to continued efforts to negotiate private acquisitions.

## **2. Recommendations**

### **2.1 That the Committee:**

- 2.1.1 Notes that recommendation 2.1 made by the Cabinet on 15 January 2019 means that the Council approved the underwriting and forward funding of the costs of the Scheme up to £25.5m up to the submission of the Full Business Case to the Department for Transport.
- 2.1.2 Notes the ongoing requirement to forward fund expenditure on the Scheme in lieu of external contributions. And notes that this presents financial risks as outlined in the financial implications of the report

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- 2.1.3 Confirms that the acquisition of the land identified in the Map accompanying The Cheshire East Council (A533 Middlewich Eastern Bypass) Compulsory Purchase Order 2022 (“the Order Map”) attached to the report is necessary for highway purposes.
  - 2.1.4 Approves the draft Statement of Reasons, the draft CPO (including the form and contents of the Schedules to the CPO (“the Order Schedules”) and the draft Order Map both substantially in the form annexed to the report for the purposes of the CPO.
  - 2.1.5 Approves the draft plans accompanying The Cheshire East Borough Council (A533 Middlewich Eastern Bypass) (Classified Road) (Side Roads) Order 2022 (“the SRO Plans”) substantially in the form annexed to the report for the purposes of the SRO.
  - 2.1.6 Approves the draft SRO Schedule substantially in the form annexed to the report for the purposes of the SRO.
  - 2.1.7 Is notified of the Statutory Blight regime that requires the Council to respond to Statutory Blight Notices pursuant to Part VI, Chapter II of the Town and Country Planning Act 1990 (as amended) (“the Act”) as a consequence of the relevant land becoming blighted by virtue of relevant trigger events as contained within Schedule 13 of the Act.
  - 2.1.8 Is notified of the submission of the Full Business Case to the Department for Transport Large Local Majors Scheme funding and any material changes to the Scheme funding.
- 2.2 Authorises the Director of Highways and Infrastructure in consultation with the Director of Governance and Compliance ;
- 2.2.1 To make minor modifications to the draft Statement of Reasons, draft CPO and draft Order Map as necessary.
  - 2.2.2 To make minor modifications to The Cheshire East Borough Council (A533 Middlewich Eastern Bypass) (Classified Road) (Side Roads) Order 2022 and the SRO Plans as necessary.
  - 2.2.3 To determine the form and contents of the Schedules to the CPO (“the Order Schedules”), which identify the interests in the land and new rights to be acquired pursuant to the CPO, as identified within the Order Map.
  - 2.1.4 To make if necessary, any a minor or technical amendment to the CPO and SRO and Bridge Scheme, prior to the making of the CPO and SRO and the Bridge Scheme.
  - 2.1.5 In the event that any local Public Inquiry is convened to consider objections to the CPO, SRO and/or Bridge Scheme (as the case may be) to prepare and submit such evidence as is necessary in support of the CPO, SRO

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and/or Bridge Scheme, including enlisting the assistance of outside consultants and Counsel to assist in the preparation and presentation of such evidence.

2.2 Authorises the Director of Governance ;

- 2.3.1 To make The Cheshire East Council (A533 Middlewich Eastern Bypass) Compulsory Purchase Order 2022 (“the CPO”) pursuant to Sections 8, 239, 240, 246, 250 and 260 of the Highways Act 1980, and Section 3, Parts II and III of Schedule 2 and Schedule 3 to the Acquisition of Land Act 1981 and all other powers as appropriate for the purpose of acquiring the land and new rights shown on the Order Map and described in the Schedules to facilitate the construction of the Scheme, and that the Common Seal of the Council be affixed to the CPO and to the Order Map.
- 2.3.2 To make The Cheshire East Borough Council (A533 Middlewich Eastern Bypass) (Classified Road) (Side Roads) Order 2022 (“the SRO”) under Sections 8, 14 and 125 of the Highways Act 1980 and all other necessary powers to improve, stop up existing highways, stop up and/or amend private means of access and provide replacement private means of access, and construct lengths of new highway as required to deliver the Scheme, and that the Common Seal of the Council be affixed to the SRO and the SRO Plans.
- 2.3.3 To make The Cheshire East Council (A533 Middlewich Eastern Bypass - Trent and Mersey Canal Bridge) Scheme 2022 under Section 106(3) of the Highways Act 1980 to enable the construction of a road bridge over the Trent and Mersey Canal and that the Common Seal of the Council be affixed to the Bridge Scheme.
- 2.3.4 To submit the CPO, the SRO and the Bridge Scheme to the Secretary of State for Transport for confirmation and to comply with all associated requirements in respect of personal, press and site notices, and to take all other relevant action thereon to promote the confirmation of the Orders, including any necessary modification.
- 2.3.5 In the event that no objections are received to the CPO (or if any objections made are subsequently withdrawn, or the Director of Governance and Compliance certifies that they may be legally disregarded) and no modifications are required to be made to the CPO, to obtain the appropriate Certificate under Section 14A of the Acquisition of Land Act 1981 enabling the Council to confirm the CPO as made.
- 2.3.6 That as soon as the CPO, SRO and/or Bridge Scheme have been confirmed and become operative, to comply with all associated requirements in respect of personal and press notices and to make and give notice of a General Vesting Declaration under the Compulsory

Purchase (Vesting Declarations) Act 1981 and/or Notices to Treat and Notices of Entry in respect of the land and rights to be acquired compulsorily.

2.3.6 In the event that any question of compensation in respect of such interests or rights is referred to the Upper Tribunal (Lands Chamber) for determination, to take all necessary steps in relation thereto including advising on the appropriate uses and compensation payable and issuing the appropriate certificates and appointing external legal advisors (including Counsel where required) to represent the Council in respect of any such reference.

2.3.7 In respect of Statutory Blight, delegate authority to the Monitoring Officer in consultation with the Finance Sub-Committee Chair and the Executive Director (Corporate Services) (as necessary) to agree appropriate terms in accordance with statutory provisions.

2.4 Authorises the Head of Estates to;

2.4.1 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.

2.4.2 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 Land Compensation Act 1973 and the settlement of any claims made pursuant to Part 1 of the Land Compensation Act 1973.

### **3 Reasons for Recommendations**

#### **Compulsory Purchase Order**

3.1 The acquisition of the land enables the Council to proceed with the development and delivery of the Scheme. A Scheme plan can be found attached in Appendix A.

3.2 The Scheme involves the construction of a new single carriageway road, known as the Middlewich Eastern Bypass. The proposed route of the Scheme follows a north-south alignment to the east of Middlewich, providing a new route between the A54 Holmes Chapel Road and the A533 Booth Lane to the south of Middlewich. It is located within Cheshire East, with the exception of a small area

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of the northern section of the road, which extends into the borough of Cheshire West & Chester.

- 3.3 The Scheme has been identified as a key piece of infrastructure vital to the future prosperity of Middlewich, Cheshire East and the wider region and is, therefore, included in the Local Plan (LPS 44: Midpoint 18, Middlewich).
- 3.4 The Scheme sits on the eastern edge of the Middlewich Settlement Zone and will provide traffic routes to avoid Middlewich town centre, relieving congestion and contributing strongly to the delivery of objectives within the Local Plan Strategy of supporting the economic growth agenda for Middlewich and the sub-region, with aims for up to 1,950 new dwellings and c.6,500 additional jobs in the town. Policy PG7 of the Local Plan states that Middlewich is expected to accommodate development of 70 ha of employment land and the bypass is required to release a substantial proportion of this land.
- 3.5 Delivery of the Scheme is noted in the Local Plan Strategy at paragraph 15.491 which states: *'The timely delivery of the Middlewich Eastern Bypass is key to ensuring that Middlewich realises its full sustainable growth potential as a Key Service Centre and also contributes to the prosperity of the borough as a whole'*.
- 3.6 Paragraph 15.510 of the Local Plan Strategy then states that the bypass is: *'a key piece of infrastructure vital to the future prosperity of Middlewich, Cheshire East and the wider region'*.
- 3.7 The information obtained from traffic modelling undertaken as part of the Outline and Full Business Cases forecasts that traffic without a new route will increase on all routes that are currently designated Air Quality Management Areas or Noise Important Areas. Traffic increases will cause a worsening of air quality and an increase in noise. By providing a new route, congestion through the town centre will be reduced by removing the proportion of traffic that currently uses the A533 to travel south towards Sandbach and Crewe or north from Crewe and Sandbach. Removal of this traffic from the total passing through the town centre will enable existing junctions to operate within capacity removing the causes of congestion.
- 3.8 It will also reduce congestion on A54 Kinderton Street within the vicinity of the junction with Brooks Lane releasing capacity in the highway network to support the redevelopment of LPS 43 (Brooks Lane).
- 3.9 Safety for pedestrians and other vulnerable groups will be improved on Leadsmithy Street & Lewin Street by the removal of large proportions of HGV traffic.
- 3.10 The construction of the Scheme cannot be achieved without the acquisition of the land and the new rights identified on the Order Map. The acquisition of the land and new rights enables the Council to proceed with the development and delivery



of the Scheme.

- 3.11 Acquiring the necessary land and rights by negotiation is preferable and the Council must be able to demonstrate that it has made all reasonable efforts in this regard. However, it may not be possible to conclude voluntary acquisitions with all affected parties and for all land title issues to be dealt with within the funding window for this Scheme. Accordingly, the renewed authorisation of compulsory purchase powers is sought so that the project programme can be maintained and to demonstrate the Council's intention to proceed with the Scheme. The Council will continue to make every effort to acquire by negotiation all necessary interests that are needed to deliver the Scheme (and will continue to do so in parallel to the compulsory purchase process), but it recognises that it may not be possible to agree terms for the acquisition of all interests. Without the acquisition of all interests, the delivery of the Scheme will be impinged and/or unable to proceed.
- 3.12 The Scheme will require the acquisition of 52.3 hectares of land and new rights. The interests of 21 freeholds, 14 leaseholds and 14 subsoil owners are affected. The Order Map will be available for inspection by members at the meeting and a reduced size version is annexed to this report (Appendix C).
- 3.13 The land to be acquired is predominantly agricultural land. The Scheme does not require the acquisition of one residential property; however this has been negotiated by agreement. The Scheme does not require the acquisition of land in any of the categories where land must be provided in exchange, such as common land or public open space.
- 3.14 Some of the areas where the freehold interest is to be acquired is needed for ecological mitigation works necessary as a result of the Scheme and, subject to negotiation, it may be possible for the freehold interest to be retained by the landowners, subject to the landowners entering into binding legal obligations with the Council providing for pre-agreed maintenance works to be undertaken by the landowner following construction of the Scheme.
- 3.15 Some areas where the freehold title is to be acquired will not be required for the permanent works and, subject to negotiation, may be offered back to the current owners along with the payment of compensation in due course in accordance with the Crichel Down rules.
- 3.16 In the event that the Scheme is not completed, traffic levels within Middlewich are expected to increase, causing increased levels of congestion and a worsening of current environmental impacts, traffic delays, and safety issues. These consequences will adversely impact on local businesses and residents in terms of deteriorating convenience and reliability of reduced visitor attractiveness and a reduction in commercial viability.

### **Side Roads Order**

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- 3.17 The SRO will authorise the stopping-up, diversion and creation of new lengths of highway or reclassification of existing highways, together with the stopping up and/or amendments to private means of access to adjacent premises, and re-provision of private means of access to those premises. The CPO will include land that is required to enable the works authorised by the SRO to be carried out.
- 3.18 The plans of the works and alterations to be authorised by the SRO will be available for inspection by members at the meeting.
- 3.19 The land that is proposed to be acquired is the minimum considered to be reasonably required to achieve the selected design option. All beneficiaries of any stopped up private means of access will be provided with a reasonably convenient and commodious alternative means of access, unless there is no need for an alternative access to be provided.
- 3.20 It is the Council's intention that the current A533 will be de-classified between Tetton Bridge and 1 East Tetton Cottages, and the road from the new roundabout to the A54 at Townbridge will become the B533 with the majority of it downgraded from its current classification as A533

### **Bridge Scheme**

- 3.21 The land for the Bridge Scheme and the working space for construction of the crossing are all contained within the existing limits of the CPO, as shown in the Order Map. Once the Bridge Scheme has been made, it is submitted to the Secretary of State for Transport who then publishes the proposals for consultation with the Environment Agency, Canal and Rivers Trust (as statutory Navigation Authority) and other users of the canal. Following consultation, if no objections are received and the Secretary of State is satisfied with the Bridge Scheme, it can be confirmed by the Secretary of State for Transport.
- 3.22 If the Scheme is not completed, traffic levels within Middlewich are expected to increase, causing increased levels of congestion and environmental impacts. These consequences will adversely impact on local businesses and residents in terms of deteriorating convenience and reliability of travel, reduced visitor attractiveness and a diminution of commercial viability.

## **4 Other Options Considered**

### **4.1 Land Acquisition by Negotiation**

- 4.1.1 Land acquisition could be attempted solely by negotiation and subsequent agreement. However, relying on land acquisition by agreement alone does not guarantee that the land required for the Scheme will be secured and may delay delivery of the Scheme. It is intended to acquire all of the land for the Scheme by agreement where possible and to only use the powers under the Highways Act to compulsorily purchase land and new rights (where these powers are applicable) that cannot be acquired through agreement beforehand to support

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deliverability of the Scheme.

## **4.2 Cancel the Scheme**

- 4.2.1 If a decision is made to cancel the Scheme there will be no benefit from monies spent to date. Furthermore, the benefits derived from the Scheme will not be delivered.

## **5 Background**

- 5.1 The Scheme involves the construction of a new single carriageway road, known as the Middlewich Eastern Bypass. The proposed route of the Scheme follows a north-south alignment to the east of Middlewich, providing a new route between the A54 Holmes Chapel Road and the A533 Booth Lane to the south of Middlewich. It is located within Cheshire East, with the exception of a small area of the northern section of the road, which extends into the borough of Cheshire West & Chester.
- 5.2 Middlewich is located in the North West region of England, 30km east of the City of Chester, 10km north of Crewe, 4.6km east of Winsford, 8.5km southeast of Northwich and 7.5km northwest of Sandbach.
- 5.3 It has been identified as one of the Key Service Centres for Cheshire East, and as such the vitality and growth of the town contributes to the prosperity of the Borough as a whole.
- 5.4 The Scheme sits on the eastern edge of the Middlewich Settlement Zone and will provide traffic routes to avoid Middlewich town centre, relieving congestion and contributing strongly to the delivery of objectives within the Local Plan Strategy of supporting the economic growth agenda for Middlewich and the sub-region, with aims for up to 1,950 new dwellings and c.6,500 additional jobs in the town. Policy PG7 of the Local Plan states that Middlewich is expected to accommodate development of 70 ha of employment land and the bypass is required to release a substantial proportion of this land.
- 5.5 Delivery of the Scheme is noted in the Local Plan Strategy as paragraph 15.491 states: 'The timely delivery of the Middlewich Eastern Bypass is key to ensuring that Middlewich realises its full sustainable growth potential as a Key Service Centre and also contributes to the prosperity of the borough as a whole'.
- 5.6 Paragraph 15.510 of the Local Plan Strategy states that the bypass is: '*a key piece of infrastructure vital to the future prosperity of Middlewich, Cheshire East and the wider region*'.
- 5.7 Within the Local Plan Strategy, the Scheme is linked specifically to the Midpoint 18 Business Park (LPS 44, also branded as Magnitude), providing suitable means of access to significant inaccessible areas of the allocated site.

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- 5.8 The Council has developed a detailed design and obtained full planning permission for an earlier iteration of the Scheme under planning application reference 18/5833C. The consented scheme has been augmented following a period of design challenge and cost reduction and has two additional planning consents: 20/2064C being a minor material amendment to the original consent, and 20/2162C being an additional consent outside the redline limits of the original consent. At the time of report preparation, the Council is awaiting determination of further minor material amendments to the current consents submitted under applications 21/2073C and 21/0633C. The applications are based upon revisions to the Scheme, which reduce land take for environmental mitigation and reduce scheme costs and are expected to be determined prior to confirmation of the CPO.
- 5.9 The Council is the main Local Planning Authority (LPA) responsible for granting planning consent for the Scheme, but Cheshire West and Chester Council is also responsible for planning consent for the works associated with a small part of the Scheme within its administrative area. Planning application reference 18/04883/FUL was consented for this section of the Scheme, together with non-material amendment reference 20/01758/NMA.
- 5.10 The Council is the Local Highway Authority (LHA) responsible for maintaining the public highway in the Borough and it will also maintain the Scheme where it lies within the Borough of Cheshire West & Chester via an agreement under Section 8 of the Highways Act 1980. The agreement allows the Council to act on behalf of Cheshire West and Chester
- 5.11 To meet the programme for the Scheme, the Council will need to undertake further work as follows:
- Negotiations have taken place and continue to take place with affected landowners to secure land required for the Scheme by agreement whilst proceeding with the making of the CPO and SRO should agreements fail and statutory powers of acquisition need to be used. Negotiations will continue to take place.
  - Carry out updated ecological survey works and preliminary prepare final designs information that will eventually form part of a market-tested cost estimate for the main works which is required for inclusion in the Full Business Case (“FBC”). The FBC is to be submitted to Department for Transport in early 2023 following confirmation of the CPO, SRO and the Bridge Scheme, and a market tested target cost of the main works for the Scheme being received, to obtain the Department For Transport Large Local Majors scheme grant funding.
  - Advance works are required to be completed in sufficient time to ensure ecological mitigations and utilities diversions are sufficiently progressed to

enable the main works to commence on time.

- A suitable supply chain, including local companies as far as is possible, to ensure timely commencement of the main works.
- 5.12 The majority of the land required for the Scheme is under the control of four principal landowners and the Council's appointed agents have received positive feedback from these landowners to acquiring their interests on a private treaty basis. It is intended to acquire all the land for the Scheme by agreement where possible and to only use the powers under the Highways Act to compulsorily purchase land and new rights (where these powers are applicable) that cannot be acquired through agreement beforehand to support the deliverability of the Scheme as a matter of last resort.
- 5.13 A SRO will also be required as existing public highways will be subject to realignment and other changes at the northern and southern ends of the Scheme on Pochin Way and A533 Booth Lane respectively. At Booth Lane, the junction with Tetton Lane will also be subject to change, leading to a change of private means of access to a number of residential premises and interests.
- 5.14 The Council has appointed external solicitors to undertake preparatory work, including the drafting of the Orders required to deliver the Scheme. Chartered surveyors have also been appointed to deal with negotiations on land acquisition by agreement with a view to securing all land necessary to deliver the Scheme by agreement. However, voluntary acquisitions of all of the land affected and rights required may not be possible.
- 5.15 Whilst acquisition by agreement will be pursued, initiating the CPO process over the third-party land holdings required for the Scheme affords greater certainty that the Scheme will proceed in the event that negotiations break down. This is in line with national guidance on the use of CPO powers set out in "Guidance on Compulsory Purchase Process and the Crichel Down Rules" (July 2019) ("the Guidance").
- 5.16 Mitigation against the adverse effects of the construction and subsequent operation of the new highway will be subject to agreements made under section 253 of the Highways Act 1980 with the owners of land in the vicinity of the highway. These will provide for mitigation areas which will result in a net gain in biodiversity and ensure that suitable habitat and foraging areas are provided for key species including barn owl, lesser silver water beetle, badgers, bats, reptiles, amphibians. Areas of tree and shrub planting will also be secured to provide landscape screening and visual amenity. The intention is that the areas will be managed by the landowners according to arrangements set out in the agreements which will include detailed maintenance schedules approved by the local planning authority.
- 5.17 It is expected that the CPO, SRO and Bridge Scheme will be made in January

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2022. The Secretary of State for Transport will consider whether the CPO, SRO and Bridge Scheme should be confirmed and such confirmation may be considered following a local Public Inquiry to deal with objections.

- 5.18 At the north end of the Scheme, close to Pochin Way and the A54 Salt Cellar Roundabout, part of the proposed highway infrastructure lies within the administrative area of Cheshire West and Chester Council (“CWACC”).
- 5.19 The Council’s overall expenditure on the Scheme is expected to be £74m, including an approved budget of £1.8m for the Outline Business Case, which predates the current scheme.
- 5.20 The Council’s 2021-25 Medium-Term Financial Strategy, as reported to Cabinet in February 2021, makes provision for this expenditure, where £25.5m is included in the approved Capital Programme and the remaining £48.5m is included in the Addendum. The 2022-25 Capital Programme is due to be considered by the Corporate Policy Committee for recommendation to Full Council in February 2022, where updates will be made to include the total scheme budget in the approved Capital Programme.
- 5.21 The Highways and Transport Committee approval will be sought prior to the submission of the Full Business Case to seek release of the Department for Transport Large Local Majors grant funding to the value of £46.78m.
- 5.22 The Council’s local contribution will be met from S106 developer contributions of which £7.8m has already been agreed. The Council have agreed to forward fund the Scheme with the funding covered in the MTFS.
- 5.23 A Statement of Reasons has been prepared which sets out the reasons for building the Scheme and explains the need for the CPO, SRO and Bridge Scheme. This can be found in draft at Appendix F.

#### **The need and justification for the Compulsory Purchase Order**

- 5.24 The draft CPO can be found at Appendix D.
- 5.25 The purpose of seeking to acquire land and new rights compulsorily is to enable the Scheme to be constructed. These proposals would enable the Council to meet its statutory purposes and highway objectives within the shortest realistic timescale in the most appropriate way.
- 5.26 The Council recognises that a CPO for the Scheme can only be made if there is a compelling case in the public interest which justifies the acquisition of private rights and interests in land and the creation of new rights sought to be acquired. A compelling case exists here. A CPO is necessary and justifiable in the public interest.
- 5.27 The Council would be making the Order to secure the outstanding interests and

new rights required to enable implementation of the Scheme, which is necessary to achieve the Council's objectives for the area. Discussions have taken place with landowners and the owners of relevant interests in an attempt to reach agreement but the CPO remains necessary to ensure that the Scheme can proceed.

### **The need and justification for the Side Roads Order**

- 5.28 The purpose of the Side Roads Orders ("SRO") is to maintain access to all land and property directly affected by the Scheme and to make necessary changes to the highway network. In order to build the new road, it is necessary to improve, or stop up existing highways and construct new highways to link into the new road. It will also be necessary to stop up some existing private means of access to land or premises and to replace those where necessary with new means of access. To enable it to carry out those works the Council is promoting the SRO.
- 5.29 The draft SRO can be found at Appendix B.

### **The need and justification for the Bridge Scheme**

- 5.30 The purpose of the Bridge Scheme is to allow construction of a bridge across a navigable waterway. This is undertaken pursuant to Section 106 Highways Act 1980, which is the only means of allowing construction of a road bridge over a navigable waterway. The Bridge Scheme will set out the design of the bridge and include relevant information to show what, if any, impact there is on public and private rights of navigation. The Navigation Authority, being Canal and River Trust, and the Environment Agency should, ideally, be in agreement with the design of the bridge (and associated navigation clearances) prior to the Bridge Scheme being made and submitted to the Secretary of State for Transport for confirmation.
- 5.31 The Environment Agency has confirmed that it is content with the design of the bridge. The Canal and River Trust has been consulted on the design of the bridge. The Council is awaiting a formal response in relation to any procedure that may be necessary to temporarily narrow the navigable passage during construction, and the Council considers that the design of the bridge does not adversely impact on rights of navigation and such rights are maintained by the Scheme.
- 5.32 The draft of the Bridge Scheme can be found at Appendix E.

## **6 Statutory Blight**

- 6.1 Town and Country Planning Act 1990 (as amended) ("the Act") contains trigger events within Schedule 13 relating to when land will become the subject of potential statutory blight claims. Members need to be aware that once a Schedule



13 trigger event (or a number of them) has been engaged, members of the public are able to submit a Statutory Blight Notice.

- 6.2 On submission of a Statutory Blight Notice, the claimant needs to evidence that the land is blighted in accordance with Schedule 13 and that they have met the statutory requirements for qualifying criteria and eligibility. The lack of this evidence does not, however, preclude a Statutory Blight Notice being submitted and the Council needs to have a defined process for dealing with such Statutory Blight Notices in place. This approval is being sought to ensure that due process is undertaken and officers are given authority to proceed.
- 6.3 Statutory Blight refers to situations where the impact of proposed public infrastructure, development or regeneration schemes causes the value of land and/or property to fall or renders it unsaleable because it is “on-line” of the Scheme, i.e., some part of it is physically identified within the Scheme area.
- 6.4 Statutory Blight does not include land that is “off-line” of the Scheme (i.e., not physically included within the area identified by the Council), notwithstanding that it may be in close proximity. This land may be subject to generalised blight, but this is different to Statutory Blight and is not the subject of this Report.
- 6.5 The primary purpose of the Statutory Blight provisions is to bring forward the public acquisition of private land to a time which suits the owner’s wishes, rather than at the convenience of the capital programme of the acquiring public authority. This is achieved by service of a Statutory Blight Notice under the provisions of the Act and is commonly referred to as compulsory purchase in reverse. Not all owners of statutorily blighted land have a right to serve a Statutory Blight Notice. To qualify, various legislative criteria must be met and evidenced and there must be a qualifying interest:
- 6.6 A person will have a ‘qualifying interest’ provided they satisfy the following criteria:
  - 6.6.1 The land must be either a dwelling, business premises or mixed dwelling/business premises, or an agricultural unit and all or part of it is within ‘blighted land’; and
  - 6.6.2 The person has either an eligible interest in the land as:
    - 6.6.2.1 a residential owner-occupier of a private dwelling;
    - 6.6.2.2 an owner-occupier of business premises, with a net annual (rateable) value not exceeding £44,200 in Greater London and £36,000 in the rest of England); or
    - 6.6.2.3 an owner-occupier of an agricultural unit or part of an agricultural unit.



- 6.7 A resident owner-occupier of a dwelling and an owner-occupier of a business premises must also show that they have a freehold interest or a leasehold/tenancy interest with not less than 3 years unexpired term. They must also show that they were in occupation of the whole or part of the blighted land for the 6 months preceding the service of a Statutory Blight Notice or, where the blighted land has been unoccupied for a period of not more than 12 months, that they were in occupation for the 6 months preceding that unoccupied period. The definition of owner-occupier of an agricultural unit is subject to the same requirements except that they must show that they were in occupation of the whole of the agricultural unit.
- 6.8 Unless the 'blighted land' is subject to a compulsory purchase order, the claimant must show that they have made reasonable endeavours to sell the land at a realistic 'unblighted' price and that they have been unable to do so except at a substantially lower price. There is no standard marketing requirement or defined period of time that such marketing should take place, nor is there any definition of what constitutes "substantially lower". If challenged by the relevant authority, then it is a matter of judgement of the Upper Tribunal (Lands Chamber). In this case, once the CPO has been sealed and made by the Council, there will be no need to evidence this element.
- 6.9 It is not considered that any properties present a threat of Statutory Blight as residential properties online of the Scheme have already been acquired and non-residential land is not subject to the occupancy requirements that would result in a qualifying interest, with much of that land being earmarked for development in any event. To the extent that any Statutory Blight Notice is served on the Council, the contingency within the Scheme budget allows for these notices to be appropriately dealt with in accordance with statutory provisions.

## **7 Implications of the Recommendations**

### **7.1 Legal Implications**

- 7.1.1 The Council is the Local Highways Authority (the "LHA") for the area in which the Order Land is situated. By virtue of Sections 239, 240, 246, 250 and 260 of the Highways Act 1980 (as amended) and Section 3, Parts II and III of Schedule 2 and Schedule 3 to the Acquisition of Land Act 1981 and all other powers as to the Acquisition of Land Act 1981, the Council has the power to acquire compulsorily any land and new rights in its area for highway purposes.
- 7.1.2 In resolving to make the CPO, the SRO and the Bridge Scheme, the Council would be proceeding under powers contained in the Highways Act 1980, authorising the compulsory purchase of land and new rights required to deliver the Scheme, together with improvements, stopping up of highways, rights of way and private means of access and providing replacement of private means of access.

- 7.1.3 Part XII of the Highways Act 1980 includes a number of CPO powers to support the delivery of highways. These include the following:
- 7.1.3.1 Section 239 of the 1980 Act pursuant to which the highway authority for the area may acquire land required for the construction of a highway, other than a trunk road, which is to become maintainable at the public expense, as well as any land required for the improvement of a highway.
  - 7.1.3.2 Section 240 of the 1980 Act, pursuant to which the highway authority may acquire land required for use in connection with construction or improvement of a highway and the carrying out of a diversion or other works to watercourses.
  - 7.1.3.3 Section 246 of the 1980 Act pursuant to which the highway authority can acquire land for the purpose of mitigating any adverse effect which the existence or use of a highway constructed or improved by them has or will have on the surroundings of the highway.
  - 7.1.3.4 Section 250 of the 1980 Act allows the highway authority to acquire rights over land, both by acquisition of those that are already in existence, and by the creation of new rights.
  - 7.1.3.5 Section 260 authorises the clearance of the title to land already held by the Council and required for the scheme and which might otherwise interfere with the Council's activities in exercising its statutory powers to construct the works.
- 7.1.4 The delivery of the Scheme will require the Council to make a CPO using the powers set out above.
- 7.1.5 According to the Guidance, compulsory purchase powers should only be used where there is a compelling case in the public interest that the benefits of the scheme outweigh the interference with private rights and interests. Compulsory purchase powers are only to be used as a last resort and the land proposed to be acquired should be the minimum considered to be reasonably required to achieve the selected design option.
- 7.1.6 In submitting the CPO to the Secretary of State for Transport for confirmation, the Council must demonstrate that there are no impediments to implementation of the CPO. To do so, the Council must 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.
- 7.1.7 In order to progress the Scheme, the Council will be required to underwrite and forward fund the Scheme costs as detailed below in 7.2.2, until all third-party funding has been received, this therefore remains as a risk to the Council.
- 7.1.8 In addition to the Guidance, guidance included in Department for Transport

Circular 2/97 is also relevant to CPOs made under Highways Act powers. This provides that the Secretary of State for Transport will not confirm a CPO unless he is satisfied that there are no impediments to the Scheme.

- 7.1.9 The Council must also show that the Scheme is unlikely to be blocked by any physical or legal impediments to implementation; including any need for planning permission or any other consent or licence and completion of an agreement with Cheshire West and Chester Council to ensure that Cheshire East Council can exercise highway functions within the specified land within their area (see paragraph 6.1.15 below).
- 7.1.10 By making the Bridge Scheme, the Council will ensure that it can construct a bridge across the Trent and Mersey Canal that does not interfere with any rights of navigation over the waterway. Guidance relating to bridge schemes is included in Department for Transport Circular 1/97, which sets out the procedural, legal and technical requirements for bridge schemes and confirms that the only way in which to construct a bridge carrying a highway over a navigable waterway is by way of a bridge scheme.
- 7.1.11 An order under section 14 of the 1980 Act authorises a highway authority to stop up, improve, raise, lower or otherwise alter a highway that crosses or enters the route of a classified road. It also provides for the construction of new highways for purposes concerned with any such alterations or related purposes. Section 125 of the 1980 Act provides that a SRO may authorise the highway authority to stop up private means of access to premises and to provide new means of access to premises. In all instances where stopping up of either highway or private means of access is proposed, the Secretary of State must be satisfied that either no access to premises is reasonably required or that other reasonably convenient means of access to the premises are available to the premises or will be provided. Circular 1/97, as referred to above, is also of relevance to side roads orders.
- 7.1.12 Included as Appendix F is the draft of the Statement of Reasons, which provides a detailed justification for the CPO, SRO and Bridge Scheme and sets out why officers believe there is a compelling case in the public interest for making all of these orders. Committee is requested to consider the matters set out in the draft Statement of Reasons in coming to a decision on whether to authorise the use of compulsory purchase powers and proceed with the SRO and Bridge Scheme.
- 7.1.13 Section 8 of the Highways Act 1980 provides that local highway authorities may enter into agreements with an adjoining highway authority to transfer the functions of one highway authority to another and this includes the power to acquire land compulsorily.
- 7.1.14 In order to mitigate the adverse effects on the surroundings of a highway of its construction, improvement or use, Section 253 of the Highways Act 1980

authorises the Council as highway authority to enter into agreements with landowners of land adjoining or in the vicinity of the highway, restricting or regulating the use of that land either permanently or for a specified period.

- 7.1.15 The Council has powers to purchase land by agreement pursuant to section 120 of the Local Government Act 1972.
- 7.1.16 As a result of any Schedule 13 trigger event, Statutory Blight will be triggered and any Statutory Blight Notices received will need to be dealt with by the Council. A key financial implication is dealing with issues of Statutory Blight pursuant to Part VI, Chapter II and Schedule 13 of the Act. Statutory Blight affects those properties that are 'on-line' of the scheme where their purchase (or part thereof) is required for the scheme.
- 7.1.17 One of the key tenets of Statutory Blight is that there are defined legislative timescales for processing Statutory Blight Notices that are lodged. These timescales cannot be extended and require action to be taken promptly.
- 7.1.18 From the date of service of a Statutory Blight Notice, the Council has a period of two calendar months within which to respond. That response may be acceptance of the Statutory Blight Notice or objection by way of a Counter-Notice. It is key to note that even if a Statutory Blight Notice is not considered valid (i.e., the land is not blighted or the qualifying and/or legislative criteria has not been met) the Council must still respond to it in accordance with the process outlined below.
- 7.1.19 Acceptance of a Statutory Blight Notice results in what is termed a "deemed Notice to Treat". This compels the Council to purchase the entirety of the claimant's interest subject to agreeing the compensation payable. The compensation is assessed in accordance with the Compensation Code, being the compensation principles derived from statute and case law. This extends to more than just the market value of the land, with additional heads of claim being available. If agreement cannot be reached on the level of compensation, either party has the ability to refer the determination of compensation to the Upper Tribunal (Lands Chamber), who will give a binding judgment on the issue. The Upper Tribunal (Lands Chamber) is part of the justice system, administered by Her Majesty's Courts and Tribunals Service, which decides disputes concerning land.
- 7.1.20 It is key to note that although only part of a property may be "on-line" of a scheme, a Statutory Blight Notice relates to the entirety of the claimant's interest and so may compel the Council to acquire more than is necessary for the scheme in question.
- 7.1.21 The Council is also able to use one or a number of the statutory grounds for Counter-Notice contained within the Act to oppose a Statutory Blight Notice. There are seven Counter-Notice grounds and the ability to use them depends

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upon the nature of the land required and which Schedule 13 trigger event the claimant has utilised. Any Counter-Notice must be served within two calendar months of the service of the Statutory Blight Notice and the Counter-Notice grounds must be carefully considered, as they cannot be amended once the Counter-Notice is lodged.

- 7.1.22 A claimant has one month to respond to a Counter-Notice. Such response can either be acceptance of the Counter-Notice, at which point the Statutory Blight issue falls away, or a reference to the Upper Tribunal (Lands Chamber) to have the issue of Statutory Blight determined. If the Tribunal finds in favour of the claimant and reject the Council's Counter-Notice, this also results in a "deemed Notice to Treat" and the Council is compelled to purchase the entirety of the claimant's interest.
- 7.1.23 It is understood that none of the properties or land affected by the Scheme could be considered to qualify for statutory blight for the following reasons;
- Any tenancies on the affected agricultural land are known to be for a term of less of 3 years or less. Except one that requires the acquisition of 20 square meters subject to a secure Agricultural Holding Act Agreement where terms have been agreed for an acquisition and therefore any statutory blight claim would be de minimus.
  - The Scheme does not require any land from any residential properties within third party ownership, as the Council has previously acquired the only two residential properties affected by the Scheme.
  - The planning permission for the Scheme and the published route alignment do not extent to any residential properties.
  - The Scheme does not affect any commercial premises with a Rateable Value of less than £36,000.
  - The majority of the Scheme affected development land allocated for employment uses (Mid-Point 18 Business Park) where investor owners are not in occupation of the land.
- 7.1.24 Wider impacts of the scheme on business and residential property that is off-line of the scheme will be dealt with under Part 1 of the Land and Compensation Act 1973 ('Part 1 Claims'). A Part 1 Claim can be applied for one year and one day following completion of the scheme and covers claims relating to noise, vibration, smell, fumes, smoke, artificial lighting and discharge (run off from highway) as a result of the construction and use of the Scheme.
- 7.1.25 In addition, the Council may have to consider any claims that may arise for compensation for the severance and injurious affection of the land under the Compulsory Purchase Act 1965.
- 7.1.26 The current Scheme budget includes an allocation for any compensation claims that may arise.

## 7.2 Finance Implications

7.2.1 The estimated costs of the Scheme are £74m:-

	£m		£m
DfT Grant	48	Local cont. made up of:	
Local Contribution	26	Signed S106 Contributions	8
		Anticipated S106 contributions	13
		CEC contribution	5
<b>Total Funding</b>	<b>74</b>		

7.2.2 The Scheme maximises reliance on local funding sources, referred to as the Local Contribution, from third-party developer sources.

7.2.3 Third party contributions are estimated based upon current or committed section 106 developer agreements (or equivalent). Overtime the proportion of third-party funding is likely to change in response to development activity in the local area. For this reason, the local funding contribution has been shown 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.

7.2.4 In September 2017 it was agreed that the Council will continue to seek alternative funding sources from developer contributions, which could be used to recoup its contribution whilst ensuring a maximum local contribution. This approach is retained, ensuring that any call on Councils' resources is minimised.

7.2.5 As the project proceeds, there will be a requirement for the Council to continue to forward fund the Scheme, pending completion of the Full Business Case and release of Department for Transport capital grant. In order to do so approval will be sought from this Committee prior to the submission of the Full Business Case to the DfT which will detail all the financial implications for the Scheme.

7.2.6 In the scenario where a Full Business Case is submitted but grant funding is not approved by Department for Transport and the Scheme cannot progress, the Council will be exposed to funding all of the costs associated with the pre-construction works (in the order of £14.1m) to that point of scheme development, including the purchase of land or assets acquired by negotiation in advance of the decision. Any such land acquired would have a realisable value. In this scenario based on the current scheme estimates and forecasts this is a maximum estimated financial exposure of approximately £12.3m (less land acquisition costs) which would need to be funded from revenue.

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### **7.3 Policy Implications**

- 7.3.1 In making the CPO, the Council must have regard to national policy, the development plan and other relevant local policy and guidance. The relevant national planning policy is contained in the National Planning Policy Framework and the relevant Development Plan, which comprises the Cheshire East Local Plan Strategy (“the Local Plan”). There is strong alignment between the priorities that have been defined at the local and sub-regional level, and those that underpin the Government’s transport policy at a national level. This includes the need to build a strong and competitive economy, enhance connectivity and access to employment opportunities.
- 7.3.2 The need for the Scheme is clearly established in the Local Plan, identifying from the outset the need to improve transport connections to deliver the Local Plan, including the Scheme. There is also acknowledgement of the key contribution that infrastructure schemes play in supporting employment and the need to develop the infrastructure to ensure the sustainability of Midpoint 18. It is clear that the Scheme development and appraisal is consistent with another of the Government’s core objectives: to provide value for money in the provision of major transport infrastructure.
- 7.3.3 A detailed analysis and consideration of the policy context is set out in the Statement of Reasons.
- 7.3.4 By providing connectivity to new and existing areas of Middlewich and additional highway capacity to relieve existing congestion and cater for additional traffic from development, the Scheme would support the Local Plan Strategy. 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 Council.
- 7.3.5 Although the Scheme recently secured full planning consent under planning application reference 18/5833C, it will also be necessary to secure planning permission pursuant to the Section 73 application for the revised design.

### **7.4 Equality Implications**

- 7.4.1 All public sector acquiring authorities are bound by the Public Sector Equality Duty as set out in section 149 of the Equality Act 2010. This means that they must have ‘due regard’ or think about the need to:
- 7.4.1.1 eliminate unlawful discrimination
  - 7.4.1.2 advance equality of opportunity between people who share a protected characteristic and those who don’t
  - 7.4.1.3 foster or encourage good relations between people who share a protected characteristic and those who don’t



- 7.4.2 Having 'due regard' means public authorities must consciously consider or think about the need to do the three things set out in the public sector equality duty.
- 7.4.3 In exercising their compulsory purchase and related powers (e.g. powers of entry and powers to make side road orders) acquiring authorities must have regard to the effect of any differential impacts on groups with protected characteristics.
- 7.4.4 To date, equality implications have been considered in the options appraisal and are incorporated into the Outline Business Case. An Equalities Impact Assessment (EqIA) was prepared to accompany the planning application for the Scheme and was considered in determining to grant planning permission. The EqIA will continue to be considered and, where appropriate, reviewed during the life of the Scheme.
- 7.4.5 Turning to the exercise of compulsory purchase powers, it should be noted that a significant area of land close to, though not within, the CPO boundary is owned and occupied by members of the Gypsy & Traveller communities. In implementing this Scheme and exercising the powers necessary for delivery, it is not considered that any group with protected characteristics are adversely affected when it comes to the application of the Public Sector Equality Duty.
- 7.4.6 Having said this, in progressing the Orders and carrying out any further consultations, the Council will take into account the needs of persons with protected characteristics and the requirements of the Public Sector Equality Duty.

## 7.5 **Human Rights Implications**

- 7.5.1 In deciding whether to proceed with the CPO , SRO, and Bridge Scheme, 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.
- 7.5.2 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.
- 7.5.3 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.
- 7.5.4 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 the acquisition of land which will bring benefits to the residents and businesses that could not be achieve by agreement and this outweighs the loss that will be suffered by existing landowners. The CPO and SRO will follow existing legislative procedures.

- 7.5.5 All parties have the right to object to the making of the Orders and attend a local Public Inquiry arranged by the Secretary of State. Parties not included in the CPO may be afforded that right to make representations to the Inquiry if the inspector agrees.
- 7.5.6 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 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 determination.
- 7.5.7 The Courts have held that this framework complies with the Convention on Human Rights. Accordingly, officers are of the view that 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 and any interference with individual rights is justified having regard to the purposes of the acquisition.

## **7.6 Human Resources Implications**

- 7.6.1 It shall be necessary to ensure that sufficient resource is allocated in Estates, 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.

## **7.7 Risk Management Implications**

- 7.7.1 The Council will be required to accept all responsibility for cost increases beyond the cost envelope provided within the Business Case that is approved for funding by the Department for Transport. This decision is at the Full Business Case stage, which is currently anticipated in 2023.
- 7.7.2 Until the point at which the Department for Transport make their final investment decision based on the Full Business Case, any Council funding of Scheme development is at risk.
- 7.7.3 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 qualitative risk assessment.
- 7.7.4 A major risk for any highway scheme is land assembly and any substantive delay to this is likely to adversely impact on the project programme and the start of the construction programme.
- 7.7.5 The financial estimate for the Scheme has ensured there is included a budget for costs associated with any early acquisitions, including payment of professional fees incurred by affected landowners, required to meet the programme for starting construction. Where possible the Council shall enter into

- early option agreements to acquire land to mitigate the costs associated with the early acquisitions.
- 7.7.6 Robust governance arrangements for the Scheme have been operating within the strategic infrastructure project management framework and a risk register is in place, which include monitoring an effective control of identified risks on issues.
- 7.7.7 The assumed funding from section 106 agreements is not all secured so there remains a funding risk. Mitigation of this risk is under way 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 signed in section 106 planning applications. The securing of section 106 contributions is a decision of the local planning authority and these projections are subject to the decision of the local planning authority when it considers the relevant planning applications. Based upon the award letter received from the Department for Transport in November 2017, the Council has exposed to all scheme costs beyond the £46.78 million Large local major capital grant
- 7.7.8 Section 7.2.10 outlines the Council's financial exposure in the scenario where the Scheme is developed to Full Business Case submission, but grant funding is not approved by the Department for Transport and the Scheme cannot therefore progress to construction
- 7.7.9 A Planning Application made pursuant to Section 73 TCPA 1990 reflecting the revisions to the Scheme has been submitted and this is under consideration by the local planning authority. As indicated in section 7.1- Legal implications, the Secretary of State's policy is not to confirm the CPO before planning approval is granted.
- 7.7.10 Significant utility infrastructure crosses the Scheme, such as Scottish Power Energy Networks 33kV overhead lines. An initial cost estimate, including risk, is included in the overall Scheme Cost Estimate, but further work is required to confirm those estimates, and to understand the requirements of the utility companies as Statutory Undertakers.
- 7.7.11 The Council will be required to forward fund the whole of the local contribution and to underwrite third party contributions expected through Section 106 agreements, as developer contributions may take many years to collect. The Council's aim is to maximize the level of funding from contributing Local Plan Sites from section 106 developer contributions. The current estimate of funding from Section 106 agreements is as stated in paragraph 7.2.3, based on developments that could be released by the Scheme as set out in the Local Plan Strategy. The funding strategy for the Scheme is to maximise the value of S106 developer contributions in the Local Contribution however, there is no guarantee that these developments will come forward or even if they do, that all predicted funding will be collected.

7.7.12 Should the Scheme not be completed, Middlewich will continue to be a congestion constraint for traffic travelling east to west between M6 and Chester and north to south between Northwich to Crewe. The development of employment site Mid-Point 18 will also be constrained with consequent impacts on economic development and job creation.

## 7.8 Rural Communities Implications

7.8.1 As the Scheme is to be primarily constructed within the boundaries of Local Plan housing allocations, it will not introduce any new severance of existing farms or communities which would not occur in any event once the allocations are brought forward for development. There are limited requirements for land outside of the allocations and negotiations are ongoing in respect to securing the affected land parcels on a voluntary negotiated basis.

7.8.2 The scheme would directly affect four Public Rights of Way (PRoW), one Regional Cycle Route and one Long Distance Path, as well as the wider road network resulting in a short- term disruption for non-motorised users (NMUs). The adverse effects on NMUs would be reduced with mitigation and once the scheme is operational, the overall effect of the scheme on NMUs would be insignificant beneficial as a result of the additional footway and cycleways included in the scheme design.

7.8.3 There may be some impact during the construction phase on the local road network as new roundabouts are constructed on Pochin Way and Cledford Way and carriageway tie in works are carried out on Booth Lane (A533). The Scheme shall be constructed 'offline' as much as possible to maintain connectivity during construction.

7.8.4 The Scheme planning applications provide a comprehensive Environmental Assessment which considers the effect on the rural community. This assessment will include impacts such as noise, air quality, visual impact plus the Scheme's effects of Public Rights of Way and non-motorised users i.e., pedestrians, cyclists and equestrians.

## 7.9 Implications for Children & Young People /Looked After Children

7.9.1 The Delivery Agreement included a comprehensive framework to capture local Social and Community Value throughout the project. Opportunities to engage with local schools and colleges will arise as the Scheme progresses for education and training purposes. The means by which young people can be encouraged to participate in the consultation process will be considered as part of the Consultation and Engagement Plan.

## 7.10 Public Health Implications

- 7.10.1 The public health implications of the Scheme were considered during planning through preparation of an Environmental Assessment to accompany the planning application. Cheshire East Council's Environmental Health team were consulted and raised no objections in relation to Noise, Air Quality and Contaminated Land subject to conditions.
- 7.10.2 The Scheme will have environmental benefits, through reducing traffic congestion, improving travel times and journey reliability and encouraging multi modal forms of transport such as cycling and walking.

## 7.11 **Climate Change Implications**

- 7.11.1 The proposed scheme has been subject to a comprehensive Environmental Appraisal as part of the statutory planning process. This has demonstrated the wider environmental and ecological impact of the bypass and the actions, necessary steps and responsibilities for implementing mitigation.
- 7.11.2 Climate change implications are considered and reported upon in the Environmental Statement and apply particular focus to flood risk, biodiversity and ecological networks, and greenhouse gas emissions. The scheme maintains coherent ecological networks and generates biodiversity nett gain. Flood risk to properties is not made worse by the scheme, and the scheme is designed to not be impacted by floods with an annual probability of occurrence of 1% with additional allowances for more severe flooding consistent with nationally adopted guidance. The increase in carbon as a result of the scheme compared to UK National Emissions shows that overall it forms a very small contribution to carbon.
- 7.11.3 Cheshire East Council, as the relevant LPA will be required to consent to the S73 application to vary planning consent 18/5833C to affect the changes set-out in paragraph 5.9;
- 7.11.4 The proposed Scheme is embedded in the Local Plan Strategy, which has been subject to Examination in Public by the Planning Inspectorate. The Local Plan has been deemed to be a robust plan for sustainable development across the borough. The scheme contributes to this overall plan for sustainable growth in Cheshire East by enabling growth through improved connectivity and reducing adverse impacts of traffic and travel.

## 8 **Ward Members Affected**

- 8.1 The strategic nature of the Scheme will mean that journeys from multiple wards will be affected.
- 8.2 Middlewich and Brereton Rural wards are affected;
- Cllr Mike Hunter
  - Cllr Carol Bulman

- Cllr Jonathan Parry
- Cllr John Wray

## 9 Consultation & Engagement

9.1 The scheme currently has Planning Permission under planning permission reference 18/5833C and an engagement exercise was carried out as part of the pre-planning process. There are some minor design amendments and a Section 73 application is under consideration, as set out at paragraph 5.9.

## 10 Access to Information

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

## 11 Contact Information

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

Name: Chris Hindle

Job Title: Head of Infrastructure

Email: [chris.hindle@cheshireeast.gov.uk](mailto:chris.hindle@cheshireeast.gov.uk)

### Background reports

Meeting	Purpose of the report
9 February 2016 <a href="http://moderngov.cheshireeast.gov.uk/e/minutes/ieListDocuments.aspx?CId=241&amp;MId=5685">http://moderngov.cheshireeast.gov.uk/e/minutes/ieListDocuments.aspx?CId=241&amp;MId=5685</a> item 100	To consider the feasibility of the proposed scheme and to recommend a preferred route
3 May 2016 <a href="http://moderngov.cheshireeast.gov.uk/e/minutes/ieListDocuments.aspx?CId=241&amp;MId=5688">http://moderngov.cheshireeast.gov.uk/e/minutes/ieListDocuments.aspx?CId=241&amp;MId=5688</a> item 149	To consider the results of the public consultation exercise relating to the proposed routes
8 November 2016 <a href="http://moderngov.cheshireeast.gov.uk/e/minutes/ieListDocuments.aspx?CId=241&amp;MId=6105">http://moderngov.cheshireeast.gov.uk/e/minutes/ieListDocuments.aspx?CId=241&amp;MId=6105</a>	To consider the feasibility of the scheme and to finalise the road alignment option

item 60	
11 April 2017 <a href="http://moderngov.cheshireeast.gov.uk/e/minutes/ieListDocuments.aspx?CId=241&amp;MId=6110">http://moderngov.cheshireeast.gov.uk/e/minutes/ieListDocuments.aspx?CId=241&amp;MId=6110</a>	To consider and recommend the submission of the Outline Business case to the Department for Transport
item 124	
12 September 2017 <a href="http://moderngov.cheshireeast.gov.uk/e/minutes/ieListDocuments.aspx?CId=241&amp;MId=6580">http://moderngov.cheshireeast.gov.uk/e/minutes/ieListDocuments.aspx?CId=241&amp;MId=6580</a>	To consider if to submit a planning application for the preferred route, and note the updating of the outline business case
Item 44	
12 June 2018 <a href="http://moderngov.cheshireeast.gov.uk/e/minutes/ieListDocuments.aspx?CId=241&amp;MId=7076">http://moderngov.cheshireeast.gov.uk/e/minutes/ieListDocuments.aspx?CId=241&amp;MId=7076</a>	To consider the planning and deliverability update
item 9	
15 January 2019 <a href="http://moderngov.cheshireeast.gov.uk/e/minutes/ieListDocuments.aspx?CId=241&amp;MId=7082">http://moderngov.cheshireeast.gov.uk/e/minutes/ieListDocuments.aspx?CId=241&amp;MId=7082</a>	To consider the delivery strategy
item 78	
9 July 2019 <a href="http://moderngov.cheshireeast.gov.uk/e/minutes/ieListDocuments.aspx?CId=241&amp;MId=7458">http://moderngov.cheshireeast.gov.uk/e/minutes/ieListDocuments.aspx?CId=241&amp;MId=7458</a>	To approve the acquisition of land required to deliver the scheme
item 22	
7 July 2020 <a href="http://moderngov.cheshireeast.gov.uk/e/minutes/ieListDocuments.aspx?CId=241&amp;MId=7925">http://moderngov.cheshireeast.gov.uk/e/minutes/ieListDocuments.aspx?CId=241&amp;MId=7925</a>	To seek approval to proceed with the use of Compulsory Purchase Powers
item 18	
Highways and Transport Committee 21 September 2021	To seek approval to withdraw the made Compulsory Purchase Order and Side Roads Order

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<a href="http://moderngov.cheshireeast.gov.uk/eminutes/ieListDocuments.aspx?CId=961&amp;Mid=8673">http://moderngov.cheshireeast.gov.uk/eminutes/ieListDocuments.aspx?CId=961&amp;Mid=8673</a> item 19	
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Appendices

Appendix A	Draft- plans referred to in The Cheshire East Borough Council (A533 Middlewich Eastern Bypass) (Classified Road) (Side Roads) Order 2021
Appendix B	Draft- The Cheshire East Borough Council (A533 Middlewich Eastern Bypass) (Classified Road) (Side Roads) Order 2021
Appendix C	Draft – plans referred to in The Cheshire East Council (A533 Middlewich Eastern Bypass) Compulsory Purchase Order 2021
Appendix D	Draft - The Cheshire East Council (A533 Middlewich Eastern Bypass) Compulsory Purchase Order 2021
Appendix E	Draft -The Cheshire East Council (A533 Middlewich Eastern Bypass -Trent and Mersey Canal Bridge) Scheme 2021
Appendix F	Draft Statement of Reasons
Appendix G	Confidential and Exempt Information

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