

Key Decision: Yes

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## **Cabinet**

**Date of Meeting:** 07 July 2020

**Report Title:** Middlewich Eastern Bypass – Approval to Proceed with the Use of CPO Powers

**Portfolio Holder:** Cllr Craig Browne – Deputy Leader

**Senior Officer:** Frank Jordan - Executive Director Place

### **1. Purpose of the Report**

- 1.1. The Middlewich Eastern Bypass (“the Scheme”) will deliver an improved highway network for Middlewich to relieve congestion in Middlewich town centre. The scheme also supports economic growth and housing delivery in the town and the surrounding area.
- 1.2. This report seeks Cabinet approval of the draft of the Statement of Reasons (“SoR”) and the Order Map (“the Order Map”) attached to this report for the purposes of the Cheshire East Council (Middlewich Eastern Bypass) Compulsory Purchase Order 2020 (“the CPO”).
- 1.3. This report also seeks authorisation to make the CPO in respect of the land identified in the Order Map (“the Order Land”) and to make The Cheshire East Borough Council and Cheshire West and Chester Borough Council (Middlewich Eastern Bypass) (Classified Road) (Side Roads) Order 2020 (“the SRO”).

### **2. Report Summary**

- 2.1. The Middlewich Eastern Bypass is a proposed two-way single carriageway road scheme between the A54 (via Pochin Way) east of the town, connecting to Cledford Lane and the A533 to the south-east. 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.

- 2.2. The current programme (subject to DfT final funding approval) is for the main works award in 2021, with an estimated 22-month construction period.
- 2.3. Cabinet approved the use of powers of compulsory purchase based on the design and land take requirements identified in July 2019. Design development work has since established a revised extent of the land required as necessary to deliver the Scheme.
- 2.4. Accordingly, authority is sought again for use of powers of compulsory purchase in parallel with negotiations for the acquisition of land and new rights by agreement.
- 2.5. This report details the affected land owners and plots required to deliver the Scheme, so that Cabinet is able to make a fully informed decision on the use of powers of compulsory purchase.
- 2.6. The Council will continue to seek to negotiate the acquisition of all of the legal interests in the land required for the construction of the Scheme by agreement. However, the Council may need to rely on compulsory purchase powers in the event that it is not possible to agree terms for the acquisition of all the remaining interests in the land required to facilitate construction of the Scheme. The use of such powers would only ever be as a matter of last resort and would be in parallel to continued efforts to negotiate private acquisitions.

### **3. Recommendations**

That Cabinet:

- 3.1. Confirm that the acquisition of the land identified on the Order Map attached to the report is necessary for highway purposes.
- 3.2. Approve the draft Statement of Reasons and the draft Order Map both substantially in the form annexed to the report for the purposes of the Compulsory Purchase Order but delegates to the Director – Infrastructure and Highways in consultation with the Director of Governance and Compliance, authority to modify them as necessary.
- 3.3. Approve the draft SRO Plans substantially in the form annexed to the report for the purposes of the Side Roads Order and delegates to the Director – Infrastructure and Highways in consultation with the Director of Governance and Compliance, authority to modify them as necessary.

- 3.4. Authorise the Director – Infrastructure and Highways in consultation with the Director of Governance and Compliance to determine the form and contents of the Schedules (“the Schedules”) necessary as part of the CPO to identify the land contained within the Order Map.
- 3.5. Authorise the Director of Governance and Compliance to make The Cheshire East Council (Middlewich Eastern Bypass) Compulsory Purchase Order 2020 (“the CPO”) pursuant to Section(s) 239, 240, 246, 250 and 260 of the Highways Act 1980, Schedule 3 to the Acquisition of Land Act 1981 and all other powers as appropriate for the purpose of acquiring the land and interests shown on the Order Map and described in the Schedules (or such lesser area of land should this in his opinion be appropriate) 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.
- 3.6. Authorise the Director of Governance and Compliance to make The Cheshire East Borough Council and Cheshire West and Chester Borough Council (Middlewich Eastern Bypass) (Classified Road) (Side Roads) Order 2020 (“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.
- 3.7. Authorise the Director – Infrastructure and Highways in consultation with the Director of Governance and Compliance to make any amendments necessary to the contemplated CPO and/or SRO (“the Orders”) arising as a result of further design work or negotiations with landowners or affected parties or for any connected reasons in order to enable delivery of the Scheme.
- 3.8. Authorise the Director of Governance and Compliance to advertise the making of the CPO and the SRO (“the Orders”) 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.
- 3.9. Agree that 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, to authorise the Director of Governance and Compliance to obtain the appropriate Certificate under Section 14A

of the Acquisition of Land Act 1981 enabling the Council to confirm the CPO as made.

- 3.10. Agree that in the event that relevant objections are received to the Orders (or any of them) and are not withdrawn, or that modifications are made to the Orders, to authorise the Director of Governance and Compliance to submit the Orders to the Secretary of State with a request that it be confirmed in the required form.
- 3.11. Agree that in the event that any Public Inquiry is convened to consider objections to the Orders (or any of them), authorise the Director – Infrastructure and Highways in consultation with the Director of Governance and Compliance to prepare and submit such evidence as is necessary in support of the Orders including enlisting the assistance of outside consultants and Counsel to assist in the preparation and presentation of such evidence.
- 3.12. Agree that as soon as the Orders (or any of them) have been confirmed and become operative, authorise the Director of Governance and Compliance 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 those properties to be acquired compulsorily.
- 3.13. Authorise the Head of Estates to negotiate terms and to acquire land and rights 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 complete such acquisitions including but not limited to licences, transfers, easements, deeds of release, land management agreements, settlement agreements and agreements entered into pursuant to Section 253 of the Highways Act 1980 for the purpose of mitigating any adverse effect which the construction, improvement, existence or use of the highway has or will have on the surrounding of the highway.
- 3.14. Authorise the Head of Estates to negotiate and approve the payment of any compensation and 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

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

- 3.15. Agree that 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 authorise the Director of Governance and Compliance to take all necessary steps in relation thereto including settlement of such proceedings if appropriate, advising on the appropriate uses and compensation payable and issuing the appropriate certificates and appointing Counsel (where required) to represent the Council in respect of any such reference.
- 3.16. Authorise the Council to enter into an agreement with Cheshire West and Chester Council pursuant to section 8 of the Highways Act 1980 facilitating the transfer of functions of Cheshire West and Chester Council's highway powers and duties in relation to that land which falls within the administrative boundary of Cheshire West and Chester Council and as is required for delivery of the Scheme.

#### **4. Reasons for Recommendations**

- 4.1. The acquisition of the land enables the Council to proceed with the development and delivery of the Scheme.
- 4.2. Acquiring the necessary land and rights by negotiation is preferable and the Council must be able to demonstrate by the time of the Public Inquiry 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 within the funding window for this Scheme. Accordingly, the renewed authorisation of compulsory purchase action 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 compromised.
- 4.3. The Scheme will require the acquisition of the freehold title to approximately 57.3 hectares of land (or thereabouts) and a further approximately 3.7 hectares of land over which new rights are to be created. The interests of 21 freeholds, 13 leaseholds and 8 (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 A).

- 4.4. The land to be acquired is predominantly agricultural land. The Scheme does 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 has to be provided in exchange, such as common land or public open space.
- 4.5. 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 land owners subject to the land owners entering into binding legal obligations with the Council providing for pre-agreed maintenance works to be undertaken by the land owner following construction of the Scheme.
- 4.6. Some of the areas where the freehold title is to be acquired to ensure delivery of the Scheme 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 that guide how public authorities should dispose of land previously acquired by compulsory acquisition, or land acquired under the threat of compulsory purchase.
- 4.7. The SRO will authorise the stopping-up, diversion and creation of new lengths of highway or reclassification of existing highways and the CPO will include land that is required to enable the works authorised by the SRO to be carried out (Appendix B and C).
- 4.8. In addition, the SRO makes provision for the stopping-up of a number of private means of access to premises and agricultural land and the CPO makes provision for the acquisition of land and new rights to enable new, replacement private means of access to be provided as part of the Scheme.
- 4.9. The plans of the works and alterations to be authorised by the SRO will be available for inspection by Members at the meeting.
- 4.10. The land that is proposed to be acquired is the minimum considered to be reasonably required to achieve the selected design option for the Scheme.
- 4.11. In the event that 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.

## **5. Other Options Considered**

### **5.1. Land Acquisition by Negotiation**

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. As indicated above, it is intended to acquire the land for the Scheme by agreement where possible and to only use compulsory purchase powers as a last resort to support deliverability of the Scheme.

### **5.2. Cancel the Scheme**

If a decision is made to cancel the Scheme there will be no benefit from the Local Contribution spent to date (£4.1m up to end December 2019). Furthermore, the benefits derived from the Scheme will not be delivered.

## **6. Background**

6.1. 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.

6.2. As a result of the development of the Scheme, some changes to the original design have affected the land required for the Scheme as outlined below:

6.2.1. The re-design of the vertical alignment has resulted in a net reduction in land take for the Scheme. However, there is a small movement of the highway boundary to the east of the road between Cledford Lane and Pochin Way and this has resulted in an increase in land take at that location;

6.2.2. The changes to the vertical alignment have also resulted in significant changes to the drainage of the Scheme and attenuation pond locations and sizes have changed;

6.2.3. The overall saving to the Scheme from the re-design of the vertical alignment is expected to be in the region of £3,500,000;

- 6.2.4. At the southern end of the Scheme, negotiations with Network Rail for a temporary rail crossing during construction has revealed a requirement for a minor change to land required during construction.
- 6.3. To achieve the Scheme's current programme the Council has:
  - 6.3.1. Carried out negotiations with affected land owners to secure land required for the Scheme by agreement;
  - 6.3.2. Submitted a S73 application to vary the planning consent for the Scheme to affect the changes set-out in Section 6.2;
  - 6.3.3. Carried out survey works and preliminary designs that will eventually form part of a market-tested cost estimate for the main works which is required for inclusion in the Final Business Case (FBC). The FBC is to be submitted to Department for Transport in 2021, following confirmation of the CPO and SRO and a market tested target cost of the main works for the scheme being received, to obtain the Large Local Majors scheme grant funding;
  - 6.3.4. Undertaken advanced works to ensure ecological mitigations and utilities diversions are sufficiently progressed to enable the main works to commence on time;
  - 6.3.5. Undertaken negotiations to develop a suitable supply chain, including local companies as far as is possible, to ensure timely commencement of the main works.
- 6.4. The Council has appointed external solicitors to advise on and undertake the necessary CPO work including drafting the Statutory Orders required to deliver the Scheme, to advise the Council throughout any Public Inquiry process and to draft the notices required to confirm the Order and acquire the land needed for the Scheme as a result of the CPO process. 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.
- 6.5. The majority of the land required for the Scheme is under the control of four land principal landowners and the Council's appointed agents have received positive feedback from these land owners as to acquiring their interests on a voluntary basis.
- 6.6. 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).

- 6.7. Mitigation against the adverse effects of the construction and subsequent operation of the new highway will be subject to S253 agreements 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 land owners according to arrangements set out in the agreements which will include detailed maintenance schedules approved by the local planning authority.
- 6.8. The current timetable anticipates that the CPO is made in 2020 subject to approval of the Section 73 application. The Secretary of State for Transport will consider whether the CPO should be confirmed and such confirmation may be considered following a public inquiry to deal with objections.
- 6.9. At the north end of the Scheme, close to Pochin Way and the A54 Salt Cellar Roundabout there is part of the proposed highway infrastructure that lies within the Cheshire West and Chester Council (“CWAC”) area. An agreement under Section 8 of the Highways Act 1980 is required with CWAC. This will enable Cheshire East to promote the Scheme and progress the CPO and SRO on behalf of both authorities.
- 6.10. 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 access to a number of residential properties and interests.
- 6.11. The residual funding for the scheme is expected to come from a combination of developer funding and Council contributions. It is the intention that proposed developments in the local area that will benefit from the Scheme will provide a financial contribution in section 106 agreements to the overall cost of the Scheme. A Cabinet

report paper recommending that the Council, in principle, underwrites any funding gap for the scheme has been approved by Cabinet.

## **7. Implications of the Recommendations**

### **7.1. Legal Implications**

- 7.1.1. In resolving to make a Compulsory Purchase Order and a Side Roads Order for the Scheme the Council would be proceeding under powers contained in the Highways Act 1980 authorising the compulsory purchase of land and the 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.
- 7.1.2. 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. 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.
- 7.1.4. 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.
- 7.1.5. 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.
- 7.1.6. Section 249 of the 1980 Act prescribes distance limits from the highway for the acquisition of land for certain purposes.
- 7.1.7. 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.
- 7.1.8. 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.

- 7.1.9. The delivery of the Scheme will require the Council to make a CPO using the powers set out above.
- 7.1.10. According to the Guidance, compulsory purchase order should only be made where there is a compelling case in the public interest. Compulsory purchase powers are only to be used as a last resort and that the land proposed to be acquired should be the minimum considered to be reasonably required to achieve the selected design option.
- 7.1.11. 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.
- 7.1.12. 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 7.1.15 below). In addition to the Guidance, guidance included in Department of 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 planning permission has been granted.
- 7.1.13. 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.

7.1.14. Included as Appendix D is the draft of the statement of reasons that provide a detailed justification for the Orders and sets out why officers believe there is a compelling case in the public interest for making the CPO. Cabinet is requested to take into account the matters set out in the draft statement in coming to a decision on whether to authorise the use of CPO powers and proceed with the SRO's.

7.1.15. 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.

7.1.16. 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.

7.1.17. The Council has powers to purchase land by agreement pursuant to s120 of the Local Government Act 1972.

## **7.2. Finance Implications**

7.2.1. The scheme has a £60.2m approved budget in the main capital programme, subject to confirmation of DfT Local Majors grant funding to the value of £46.8m.

7.2.2. The total requested contribution from the DfT is £48.0m which includes £1.2m for Outline Business Case (OBC) development.

7.2.3. The total local contribution is £12.2m which includes £ 4.0m prior year's expenditure, including £1.8m on the OBC.

7.2.4. As the project proceeds, there is a requirement for the Council to continue to forward fund the Scheme pending successful completion of the DfT Final Business Case. The Council's Medium Term Financial Strategy, as agreed at Full Council in February 2019, makes provision for this expenditure pending completion of the final business case.

- 7.2.5. A detailed cost estimate has been prepared by specialist engineering and property consultants. The following table summarises the main cost elements for the Scheme.

<b>Scheme Element</b>	<b>Estimated Outturn Costs</b> (2017 Q1 prices)
Prior years expenditure to develop the OBC	£1.8m
Construction incl. Preliminary works	£33.1m
Supervision costs	£2.0m
Land acquisition & Part 1 Claims	£5.3m
Statutory utilities	£0.8m
Design Fees	£5.3m
Inflation allowance	£4.2m
Risk Allowance	£7.7m
<b>Total</b>	<b>£60.2m</b>

- 7.2.6. The Scheme funding relies on local funding sources, referred to as the Local Contribution, secured from both the Council and third party (developer) sources. The following table summarises the funding sources.

<b>Funding Source</b>	<b>Value £</b> (2017 Q1 prices)
DfT Grant  (Including £1.2m received for OBC development)	£48.0m
Whole scheme local contribution  (Including £1.7m prior years for OBC development)	£12.2m
<b>Total Scheme costs</b>	<b>£60.2m</b>

- 7.2.7. The revised land requirements outlined in Sections 4 of this report amount to a relatively small change in the overall area of

land required for the Scheme. It is expected that there will only be limited changes to land costs with no direct impact on the affordability of the Scheme. Some of the proposed land changes will support construction cost savings which are anticipated to have a net financial benefit for the Scheme.

- 7.2.8. At this stage, £4.7m of S106 developer contributions have been secured through a S106 agreement (to be paid during the implementation of the development), with a further £1.4m expected from other developer contributions under future S106 agreements. The Council will however be required to both forward fund and underwrite the estimated level of developer contributions to the Scheme.
- 7.2.9. The funding strategy for the Scheme is to maximise the value of S106 contributions however, there is no guarantee that the developments will come forward or even if they do, that all predicted funding will be collected.
- 7.2.10. 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 the costs associated with the pre-construction works (in the order of £14m) to that point of scheme development, excluding the £1.2m provided by Department for Transport to develop the Outline Business Case. This decision is made at the Full Business Case stage, which is currently anticipated to be spring 2021.

### **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.
- 7.3.2. The relevant national planning policy is contained 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.

- 7.3.3. 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.
- 7.3.4. A detailed analysis and consideration of the policy context is set out in the Statement of Reasons.
- 7.3.5. 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.
- 7.3.6. 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 was prepared to accompany the planning application for the Scheme and was considered in determining to grant planning permission.
- 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 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 Equality Duty.

## **7.5. Human Rights Implications**

- 7.5.1. In deciding whether to proceed with the CPO and SRO, 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 achieved 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 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 Land Compensation Code and should the quantum of compensation be in dispute the matter can be referred to the Upper Tribunal (Lands Chamber) for independent and impartial adjudication.

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

7.7.2. The Council will be required to accept all responsibility for cost increases beyond the cost envelope provided within Section 7.2 (Financial Implications).

- 7.7.3. Until the point at which Department for Transport make their final investment decision based on the Final Business Case, any Council funding of Scheme development is at risk.
- 7.7.4. A Planning Application made pursuant to Section 73 TCPA 1990 reflecting the revisions to scheme has been submitted and this is under consideration by the planning authority. As indicated in the Legal Implications Section above, the Secretary of State's policy is not to confirm the CPO before planning approval is granted.
- 7.7.5. 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.
- 7.7.6. The Council will be required to forward fund the whole of the local contribution and to underwrite third party contributions expected through S106 agreements, as developer contributions may take many years to collect. The current estimate of funding from S106 agreements is as stated in Paragraph 7.2.8, 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 contributions however, there is no guarantee that these developments will come forward or even if they do, that all predicted funding will be collected.
- 7.7.7. 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 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 takes into account 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 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 and Cheshire West & Chester Council, as the relevant local planning authorities will be required to consent to the S73 application to vary planning consent 18/5833C to affect the changes set-out in Section 6.2;
- 7.11.4. The proposed Scheme is embedded in the Local Plan Strategy, which has been subject to Examination in the 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 M Hunter

- Cllr C Bulman
- Cllr J Parry
- Cllr J 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.

## **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)