

<b>Meeting:</b>	<b>Cabinet</b>
<b>Meeting date:</b>	<b>Thursday 16 November 2017</b>
<b>Title of report:</b>	<b>South Wye Transport Package</b>
<b>Report by:</b>	<b>Cabinet member infrastructure</b>

## **Classification**

Open

## **Decision type**

Key

This is a key decision because it is likely to result in the council incurring expenditure which is, or the making of savings which are, significant having regard to the council's budget for the service or function concerned. A threshold of £500,000 is regarded as significant.

This is a key decision because it is likely to be significant having regard to: the strategic nature of the decision; and / or whether the outcome will have an impact, for better or worse, on the amenity of the community or quality of service provided by the authority to a significant number of people living or working in the locality (two or more wards) affected.

Notice has been served in accordance with Part 3, Section 9 (Publicity in Connection with Key Decisions) of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.

## **Wards affected**

Stoney Street and Wormside

## **Purpose and summary**

To confirm making of the Compulsory Purchase Order (CPO) and Side Roads Order (SRO) and to approve commencing the procurement of a contractor for the Southern Link Road (SLR). The council is currently negotiating the acquisition of land, easements, rights over land, and rights of access by agreement to enable the SLR works to progress. While good progress has been made with some landowners the negotiations have been inconclusive to date in acquiring all the required interests and it is necessary for the council to use its powers of compulsory purchase to enable the council to acquire all the land and interests needed to deliver the SLR within a timely period. The council will continue with efforts to acquire, by agreement, the land, business interests and rights needed in parallel with progressing with the CPO.

## Recommendation(s)

That:

- (a) the Director for Economy, Communities and Corporate be authorised to arrange for the making of the County of Herefordshire District Council (South Wye Transport Package – Southern Link Road) Compulsory Purchase Order 2017 pursuant to sections 239, 240, 246, 250 and 260 of the Highways Act 1980 and the Acquisition of Land Act 1981 for the acquisition of the land interests and new rights within the areas coloured pink and blue respectively shown on the plan attached at appendix A (subject to any minor or technical amendments to the said plan as the Director for Economy, Communities and Corporate considers) and for compensation payments to be made in accordance with the relevant legislation;
- (b) the Director for Economy, Communities and Corporate be authorised to arrange for the making of the County of Herefordshire District Council (South Wye Transport Package – Southern Link Road) Side Road Order 2017 under Section 14 and 125 of the Highways Act 1980 as shown in the plan attached at Appendix B (subject to any final amendments of the said plan the Director for Economy, Communities and Corporate considers necessary);
- (c) the Director for Economy, Communities and Corporate be authorised to arrange for the making of the Compulsory Purchase Order and the Side Road Order and to take all the necessary and ancillary steps, including the publication and service of all statutory notices and the presentation of the Councils case at any public inquiry, to secure the confirmation of the orders by the Secretary of State;
- (d) the Director for Economy, Communities and Corporate be authorised to implement the Orders, including the acquisition of all necessary land and interests and new rights, and to pay compensation including acquisitions agreed by negotiation and to carry out any other additional steps needed for the implementation of the Orders for the Southern Link Road;
- (e) the Director for Economy, Communities and Corporate be authorised to take all operational decisions necessary to establish and implement a procurement strategy to inform and enable a decision to award a contract to the best value tender for the construction of the SLR within a budget up to £150,000.

## Alternative options

- 1 Not to utilise CPO powers and rely on negotiations with landowners to secure all the necessary land and rights to deliver the Southern Link Road (SLR). This would place additional risk both in respect of timescale and could result in considerable delay and possibly prevent delivery of the road due to one or more landowners not being prepared to sell or only at a cost significantly in excess of the market value. In accordance with the Department for Communities and Local Government (DCLG) guidance on CPOs published in October 2015, the council has and will continue to try and negotiate the acquisition of the necessary land and rights by agreement if the order is made.

## Key considerations

- 2 The aim of the South Wye transport package (SWTP) is to promote economic growth in Hereford while tackling specific problems in the South Wye area. The SWTP will reduce congestion, enhance active travel access to the Hereford enterprise zone (HEZ), reduce growth in emissions and traffic noise, reduce accidents and encourage physical activity.

The package comprises a new southern link road and a package of complementary active travel measures.

- 3 Planning permission for the Southern Link Road was granted on 18 July 2016 for the entire line of the road, in addition to all necessary junction works, side roads, drainage and environmental mitigation.
- 4 To enable the construction of the road primarily agricultural land needs to be acquired. This agricultural land is in five different ownerships and forms part of larger farming operations which will continue after the land for the road has been acquired plus land owned by the council where tenants will be affected. Part of the garden from one residential property is also required. There are no residential dwellings that need to be acquired for the road construction. There is also land in the ownership of Highways England to be acquired and a legal agreement with Network Rail to enable the new road bridge to be built over the Cardiff to Manchester railway line. The land required for the road can be seen on the plan at appendix A.
- 5 On 20 October 2016 Cabinet authorised the Director of Economy, Communities and Corporate to proceed with acquisitions through negotiations of all necessary land interests. The council is currently negotiating the acquisition of land, easements, rights over land, and rights of access by agreement to enable the SLR works to progress and the expectation is that agreement will be reached with many of the landowners and legal agreements completed during the CPO process. However it is necessary for the council to use its powers of compulsory purchase to enable the council to acquire the land and interests needed to deliver the SLR. The council will continue with efforts to acquire, by agreement, the land, interests and rights needed in parallel to progressing with the CPO.
- 6 The southern link road is a priority project for the Marches local enterprise partnership. A capital budget of £35m is approved and growth fund funding of £27m has been secured to deliver the entire package. Securing the required land interests will further demonstrate the council's commitment to the project.
- 7 If the council agrees the use of its powers of compulsory acquisition, this will not preclude the council from continuing to try to acquire the necessary rights by agreement. This report therefore asks for approval to make a CPO whilst continuing with efforts to acquire by agreement the land, interests and rights needed to carry out the works.
- 8 Statutory compensation is payable in the event of a compulsory purchase order, which will include the market value of the land plus disturbance and statutory loss payments. Where negotiated agreements are made landowners will not be financially disadvantaged by reaching early agreement as terms will be agreed in accordance with the compulsory purchase compensation code.
- 9 There are also a number of properties that whilst not required for the construction of the road are so affected by the road that it may be appropriate to consider purchase of these properties. As referred to in the cabinet report dated 20 October 2016 the purchase of these properties could be beneficial to the delivery of the project. These properties are being dealt with separately and if there is a robust business case for the discretionary purchase this will be the subject of a further report.
- 10 The land being acquired will enable the delivery of the southern link road. At the western end of the scheme a new roundabout will be constructed between the SLR and the A465 Abergavenny Road within the land being acquired. Cabinet will be aware that work is currently underway to develop the Hereford Transport Package which would include the

selection of a preferred route for the Hereford Bypass. As a route for that scheme has not yet been selected it is not possible to define land extents required for its construction. It is therefore not possible or appropriate to make any allowance within this CPO for any land required to deliver the Hereford Bypass scheme. The acquisition of land required for the Hereford Bypass would be the subject of further reports to cabinet.

- 11 If the recommendations of the report are approved the statutory process associated with the CPO & SRO for the scheme can commence and a detailed procurement strategy for the construction of the road can be developed which considers the most appropriate route to market and contract model for the construction of the road. Following this a route to market will be selected and steps will be taken to procure the contract by inviting contractors to submit tenders to construct the road. A robust evaluation of tenders will be undertaken on a quality / price basis which will enable a preferred contractor to be selected. Balfour Beatty Living Places will provide technical advice and support to the procurement process through the public realm contract. They will ensure good industry practice is followed and a robust selection process to ensure a good contractual arrangement for the delivery of the road. A further report will be prepared on conclusion of the evaluation process to authorise the award of contract subject to funding being available at that time.

## **Community impact**

- 12 The southern link road is in line with the priorities set out within the council's corporate plan and local transport plan. The scheme supports economic growth and connectivity.
- 13 The South Wye transport package (SWTP) will promote economic growth in Hereford while tackling specific problems in the South Wye area. The SWTP will reduce congestion, enhance active travel access to the Hereford enterprise zone (HEZ), reduce growth in emissions and traffic noise, improves safety by reducing accidents and encourage physical activity.

## **Equality duty**

- 14 Under section 149 of the Equality Act 2010, the 'general duty' on public authorities is set out as follows:

A public authority must, in the exercise of its functions, have due regard to the need to -

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

The Equality team have been consulted on this report; it is considered that there is no negative impact on the Protected Characteristics identified in the Equality Act 2010.

- 15 The council is of the view that in pursuing the SLR CPO and SRO it has carefully considered the balance to be struck between individual rights and the wider public interest. Any interference with Convention rights, if there is any, is considered to be justified in order to secure the economic, social, physical and environmental benefits that the SLR will bring. Appropriate compensation will be available to those entitled

to claim it under the relevant provisions of the relevant statutory provisions. For those parties who are prepared to negotiate settlements in advance of a CPO then the terms of that agreement will be under the relevant statutory powers so as such parties should not be financially penalised in reaching agreement by negotiation.

- 16 The council considers that there is a compelling case in the public interest for the making of the Orders and that the Orders, if confirmed, would strike an appropriate balance between public and private interests. The rights of owners of interests in the Order lands under the Human Rights Act 1998, in particular the rights contained in Article 8 and Article 1 of the First Protocol, have been taken into account by the council when considering whether to make the Orders and when considering the extent of the interests to be comprised in the Orders. In addition, having regard to the provisions of the Equality Act 2010 and the DCLG October 2015 Guidance on CPOs the council considers that the Order Land is both necessary and suitable for delivery of the SLR and will make a positive contribution in the promotion or achievement of the economic, social and environmental wellbeing of its area for the reasons explained in this report.

## Resource implications

- 17 There is an approved capital budget of £35m for the SWTP project and £27m of growth fund capital money has been secured for the SWTP. Land acquisition costs and compensation costs are estimated to be in the region of £1.8 million including fees, taxes etc. These costs are contained within the overall scheme budget which will be funded from the growth fund and council funding as allocated and approved in the capital programme.
- 18 Legal costs associated with the CPO / SRO process are estimated at £500K (dependant on scale of legal input required) and an allowance for this is contained within the overall scheme budget.
- 20 A budget of up to £150,000 is proposed in this report for the procurement process which will include preparing a tender for the SLR and the process of evaluating tenders and selecting a contractor. This would cover the professional fees to produce tender documents, manage the tender process and undertake detailed reviews of submitted tenders.

## Legal implications

- 21 To be able to construct the road the requisite land interests are required to be purchased by the council. This is by way of negotiation and agreement, or by compulsory purchase under the Highways Act 1980 and the Acquisition of Land Act 1981. Sections 239, 240, 246, 250 and 260 of the Highways Act 1980 grants a highway authority statutory powers to acquire land for the construction and improvement of a highway, to acquire land which is required for (or for use in connection with) the construction of the highway, to acquire land to mitigate the adverse effects of the highway and to create new rights over land. Part II of the Acquisition of Land Act 1981 general provisions to secure the purchase of the land.
- 22 The CPO process under the Acquisition of Land Act 1981 allows for the authority (on resolution of cabinet) to make the compulsory purchase order acquiring the land interests and the order is then submitted to the Secretary of State for confirmation. If any objections are received within the statutory period then the Secretary of State must deal with them by way of written representations or inquiry. Once the inquiry or written representations process is completed the Secretary of State may confirm the order either

with or without modifications. If no objection is made or objections are withdrawn the order can be made with or without modification by the council.

- 23 The making of a CPO is an executive decision and falls within the remit of cabinet under Part 3 Section 3 of the constitution as it is of sufficient public interest that a decision at a public meeting is required. It is permissible for the recommendation to make the delegations to an officer.
- 24 The procurement of the contractor to construct the SLR must be in accordance with the EU procurement requirements as set out in the council's contract procedure rules.

## **Risk management**

- 25 A detailed risk register which highlights all project risks has been developed for the SWTP project. Risks are summarised, with proposed mitigating actions, assigned an owner and any cost associated is identified and agreed.
- 26 There is a risk that CPO and Side Roads Orders are not confirmed by the Secretary of State. The implications of this are that there would be no certainty that the SLR scheme could be delivered. This will be mitigated by continuing negotiations with landowners and other parties affected by the orders, preparing accurate order documents, robust statement of case for the orders and continuing with suitable professional guidance and advice, including appropriate legal representation at any Inquiry.
- 27 Should the recommendation of this report be declined, the risk to the council is that the land and rights needed for the scheme will not be securable by negotiation within a suitable time frame and/or cost, leading to a potential adverse effect on programme.

## **Consultees**

- 28 The council is actively negotiating the acquisition of land, easements, and rights over land, and rights of access by agreement to enable the SLR works to progress. Negotiations and agreements follow good practice and legislation and any reasonable professional advice that landowners need is funded by the project budget.
- 29 All members and political group leaders were consulted about this report on 6 October 2017 and comments were invited by the 19 October 2017. No comments were received. Ward members have been updated about progress with negotiations and the CPO process.

## **Appendices**

Appendix A: SWTP CPO Plans

Appendix B: SWTP SRO Plans

## **Background papers**

None identified