



REPORT TO: ECONOMIC DEVELOPMENT & INFRASTRUCTURE SERVICES COMMITTEE ON 1 NOVEMBER 2011

SUBJECT: WESTERN DISTRIBUTOR ROAD, ELGIN

BY: CORPORATE DIRECTOR (ENVIRONMENTAL SERVICES)

1. REASON FOR REPORT

1.1 This report requests that Committee:

- i. notes the outcomes of initial consultations with property owners directly affected by the scheme; and
- ii. agrees an approach for compensation and acquisition of property affected by the Western Distributor Road scheme.

1.2 This report is submitted to Committee in terms of the Council's Administrative Scheme relating to:

- (a) the exercise of the Council's functions as Roads Authority including safety, detailed planning, design and construction, improvement, maintenance and lighting of roads, bridges and other structures; and
- (b) to make recommendations to the Council on the acquisition or sale of land and buildings.

2. REASON FOR CONFIDENTIALITY

2.1 This report contains information relating to the financial and business affairs of a particular person(s).

3. RECOMMENDATION

3.1 It is recommended that Committee:-

- (a) notes the outcomes of initial consultations with property owners directly affected by the scheme; and
- (b) recommends to The Moray Council that it:-
 - (i) approves the approach for the compensation and acquisition of properties affected by the Western Distributor Road as detailed in para 9.1 of this report; and

- (ii) **approves the Head of Housing and Property be given delegated powers to settle compensation claims, up to a maximum of £100,000, which arise in terms of compensation for losses from the compulsory acquisition by the Council of heritable property, or acquisition by agreement with compulsory powers in the background, in respect of the Elgin Western Distributor Road project, provided that payments can be accommodated within the approved budgets for the scheme.**

4. BACKGROUND

- 4.1 Following consideration of a report by the Corporate Director (Environmental Services) the Economic Development & Infrastructure Services Committee at its meeting on 6 September 2011 (paras 4 and 5 of the Minute refer) approved a preferred route for the Western Distributor Road and instructed officers to proceed with a Stage 3 assessment, detailed design, planning application and property negotiations of the entire route.
- 4.2 Work on the detailed design of the scheme will progress over the next few months and it is envisaged that an application for planning permission would be submitted in September/October 2012. It is considered it would be prudent to initiate Compulsory Purchase Order (CPO) procedures as part of the acquisition process and it is intended to report in detail on this issue to the next meeting of this Committee.

5. CONSULTATIONS

- 5.1 Officers wrote to all the property owners directly affected by the Western Distributor Road proposals in September and subsequently met with those parties who wished to discuss the scheme and its implications for their property. At these meetings officers explained the current design, outlined the planning timetable, briefly detailed the compensation procedures/rights and advised that it was likely the Council would consider commencing procedures to obtain a Compulsory Purchase Order. A particular emphasis was given to explaining that the scheme remained at an early stage of design and that the implications for individual properties may vary as a consequence of the detailed design and planning process. It was evident from the discussions with the owners of the 3 most significantly affected houses at 11, 13 and 15 Wittet Drive that they felt that the Council should confirm whether it would be willing to enter into negotiations to acquire the properties without further delay, if the householders so wished.

6. BLIGHT AND OTHER NOTICES

- 6.1 Where land has been allocated for public authority functions (which includes being shown in a development plan or by a resolution of the local highway authority) owners of the affected land may serve on that authority a Blight Notice under Schedule 14 of the Town & Country Planning (Scotland) Act 1997 requiring that the authority acquire their property. Generally this relates

to circumstances where the saleability of a property, at its market value, is adversely affected by the prospect of its' compulsory acquisition for a public sector scheme. If the property owner wants to sell his property in advance of its' compulsory acquisition, he may find that it can only be sold at a depressed value because of the blighting effect of the prospect of compulsory acquisition. Section 11 of the Schedule deals with land on or adjacent to the line of a road proposed to be constructed, improved or altered and states that a Blight Notice can only be issued under specified circumstances; one such circumstance is where "land shown on plans has been approved by resolution of the Roads Authority". Following the decision by this Committee detailed in Section 4.1 above, affected property owners are therefore now potentially entitled to serve a Blight Notice. The Moray Council may issue a Counter-Notice stating reasons for rejecting a Blight Notice. Of the reasons available for rejecting a notice the most likely circumstances to apply to this scheme would be:

- i. the applicant does not have a qualifying interest, or
- ii. where only part of the owner's title is to be acquired.

6.2 Should the Council issue a Counter Notice based on option (ii) the owner may then issue a Notice of Objection to Severance stating that their property is materially affected by the scheme and that the remaining property's convenience or amenity is materially affected by the scheme. If this notice is valid the Council would be obliged to acquire the property detailed in the notice. This type of claim must be considered in light of the specifics of each case and should the Council and the owner fail to agree on the validity of such Notices, the matter can be referred to the Lands Tribunal for an independent decision.

6.3 Of the properties currently affected by the scheme, it is considered that the owners of the houses at 11, 13 and 15 Wittet Drive, the 2 residential development sites designated R1 and R8 in the Moray Local Plan 2008 and the gardens at Connet Hill - all as shown outlined and hatched on **APPENDICES I and II** - could potentially issue viable Blight Notices in advance of planning permission being determined.

7. **PROPERTIES**

11 Wittet Drive

7.1 The owner of 11 Wittet Drive has indicated an interest in potentially serving a Blight Notice on the Council which would leave the Council with two options:

- a) The Council could reject the Blight Notice, as described in para 6.1 above and reject any Notice of Objection to Severance. In this case the Council would complete the detailed design before considering any purchase of the garden ground required for the scheme. Compensation would be payable on the basis of the value of the land taken, the loss in value of the remaining garden and house, disturbance

payment for the owners expenses and costs of making a claim and compensation for the affects of the construction works; or

- b) The Council could accept any request to purchase the entire garden and house thereby avoiding any disputes with the owners. Compensation would be payable on the basis of the value of the whole house and garden, a £15,000 Home Loss Payment, a disturbance payment for the owners expenses of moving home and making a claim.

7.2 Estates and Transportation officers are of the opinion that option (b) would best suit the Councils aims, for the following reasons:-

- i) the acquisition of No 11 in its entirety is likely to have a minimal or even a positive financial impact on the scheme. This is because the compensation for any partial land take, on top of compensation for a reduction in the value of the remaining property, could be greater than the loss in selling on a vacant property. It is considered this is likely as there will be buyers in the market who place a lesser value on a large garden or a secluded/quiet position than the current owner. Whilst the Council would require to pay a home loss payment of £15,000 and disturbance to cover the moving costs of the owner these could easily exceed the combined costs of any mitigation measures (including a noise impact assessment, triple glazing, screening etc.) and disturbance costs which would only apply in the case of a partial purchase;
- ii) removal of a significant potential objection to the scheme at the planning application stage and at any subsequent public planning enquiry or planning appeal;
- iii) the scheme design would be less restricted if it did not have to consider the personal concerns and worries of a householder at 11 Wittet Drive which could generate possible cost savings and/or allow the design to minimise impact on other affected properties; and
- iv) the cost will be identified at an early stage removing the risk of unknown budget impacts at a late stage in the scheme design.

13 & 15 Wittet Drive

7.3 Officers having considered all the properties currently affected by the Western Distributor Road scheme believe that only 2 property owners could serve a Blight Notice on the Council at this time, which could not be rejected on the grounds detailed in para 6.1 (i) & (ii) above, namely 13 and 15 Wittet Drive. Owners of both properties have indicated that they wish to sell their property to the Council without any lengthy delays.

7.4 As well as assisting the house owners to relocate in early course, the purchase of these properties by the Council would negate likely future objections to the proposed scheme from the proprietors at the planning application stage and at any subsequent public planning enquiry or planning

appeal. In addition the costs would be identified at an early stage, removing the risk of unknown budget impacts at a late stage in the scheme.

Development Sites

7.5 The owners of the 2 residential development sites designated R1 and R8 in the Moray Local Plan 2008 – as shown on **APPENDIX I** and **APPENDIX II** respectively, currently appear to fail to have a “Qualifying interest” under the legislation as they are neither residential owner occupiers, agricultural owner occupiers or owner occupiers of a commercial property with an annual value below the set limit. A lease holder of these fields may be able to serve a notice, but this is considered unlikely given the owners are intending to develop the land for housing.

7.6 Once land requirements have been finalised it is recommended that the Council enters into negotiations to purchase the land required.

Connet Hill

7.7 The owners of Connet Hill (shown on **APPENDIX I**) are understood to be prepared to liaise with the Council during the design process. Therefore it is not anticipated that they would issue a Blight Notice. If they changed their position it is believed that a Blight Notice could be rejected on the grounds detailed in para 6.1(ii) above. In the unlikely event that the owners issue a Blight Notice over the whole property it could be argued that the impact on this property is not sufficiently severe to justify a Notice of Objection to Severance.

Other Properties

7.8 As detailed in the report to this Committee by the Corporate Director (Environmental Services) on 6 September 2011 (paras 4 & 5 of the minute refers) the current design of the scheme would necessitate the acquisition of small areas of garden grounds and accesses from Nos. 9, 16, 17 and 19 Wittet Drive.

7.9 In addition there may be claims from householders from whom no property is required by the Council. The scope for such claims is much more limited and relates to adverse impacts on properties from the subsequent use of the completed scheme.

8. DELEGATED POWERS

8.1 At present the Head of Housing and Property has delegated powers to “except for claims arising from the Flood Prevention (Scotland) Act 1961, whereby claims up to a maximum of £100,000 can be settled provided that payments can be accommodated within the approved budgets for the scheme, to settle claims up to a maximum of £10,000 which arise in terms of the Land Compensation (Scotland) Acts 1963 and 1973 in respect of compensation for losses arising from the compulsory acquisition by the Council of heritable property or acquisition by agreement with compulsory powers in the background”.

- 8.2 In order to deal with relatively small compensation claims expeditiously it is proposed that the Head of Housing and Property's delegated powers be extended to settle claims up to a maximum of £100,000 which arise in terms of compensation for losses from the compulsory acquisition by the Council of heritable property or acquisition by agreement, with compulsory powers in the background, in respect of the Elgin Western Distributor Road project, provided payments are contained within the agreed budget for the scheme. This would be consistent with existing delegated powers to deal with compensation in respect of Flood Alleviation Schemes.
- 8.3 The Head of Housing and Property has delegated powers to approve acquisitions of heritable property up to a value of £50,000 where appropriate provisions have been made in the Capital or Revenue Plan. Any proposed acquisitions above this amount would be reported to the Policy and Resources Committee to consider.

9. COMPENSATION/ACQUISITION APPROACH

- 9.1 In light of the discussions with affected owners, the legislation as it applies to owners rights to serve Blight Notices (as described above) and delegated powers, it is proposed that Committee agrees an approach to enter into negotiations to acquire properties and compensate owners along the route of the scheme as detailed below:-
- a) officers issue written guidance in early course to directly affected owners detailing their rights and outlining the compensation procedure which would apply;
 - b) in principle, to acquire 13 and 15 Wittet Drive in advance of the scheme at a time to suit the current owners;
 - c) should the Council receive a request from the owners of 11 Wittet Drive to acquire their entire property in advance of the final scheme design approvals, Committee agrees, in principle, to acquire the property at a time to suit the current owners;
 - d) the Council enters into negotiations to acquire lands within development sites R1 and R8 (as specified in the Moray Local Plan 2008) in advance of any finalised scheme, but only once land requirements have been clearly defined;
 - e) appoint the District Valuer to act on behalf of the Council for the purposes of negotiating the acquisition of properties and compensation payable with all affected owners;
 - f) as long as compensation is contained within the agreed budget for the scheme that the Head of Housing and Property be granted delegated authority to agree compensation based on the District Valuer's recommendations, up to a maximum of £100,000; and

- g) officers will ensure that all landowners, from whom property is required, are kept informed of any amendments to the scheme, as they affect their property. Such owners will be approached by officers/District Valuer, with a view to acquiring the property required, once the Council has either a definite understanding of the lands required from their property or once the Council has obtained Planning Consent for the scheme, whichever is earlier.

10. **SUMMARY OF IMPLICATIONS**

(a) Single Outcome Agreement/Service Improvement Plan

This report is in accordance with:-

National Outcome 1 and Local Outcome 3 – “Moray will benefit from improved and safer transportation and infrastructure”.

Service Priority 2 (Elgin Traffic Management Plan) of the Roads Section Service Improvement Plan.

National Outcome 9 “We live in well designed, sustainable places where we are able to access the amenities and services we need”.

Local Priority 9 (Economic Development).

(b) Policy and Legal

Landowners and occupiers who suffer depreciation in the value of their land, or who have suffered damage by being disturbed in the enjoyment of their land, in consequence of the Western Distributor Road scheme, have a statutory entitlement to compensation in terms of the Land Compensation (Scotland) Act 1963, Part 1 of the Land Compensation (Scotland) Act 1973 and related legislation which combines to create the “Compensation Code”.

The Head of Housing and Property has delegated powers to approve acquisitions of heritable property up to a value of £50,000 where appropriate provisions have been made in the Capital or Revenue Plan.

In addition, at present the Head of Housing and Property has delegated powers to “except for claims arising from the Flood Prevention (Scotland) Act 1961, whereby claims up to a maximum of £100,000 can be settled provided that payments can be accommodated within the approved budgets for the scheme, to settle claims up to a maximum of £10,000 which arise in terms of the Land Compensation (Scotland) Acts 1963 and 1973 in respect of compensation for losses arising from the compulsory acquisition by the Council of heritable property or acquisition by agreement with compulsory powers in the background”.

It is proposed that the Head of Housing and Property’s delegated powers be extended to settle claims up to a maximum of £100,000 which arise in terms of compensation for losses from the compulsory acquisition by the Council of heritable property or acquisition by agreement with compulsory powers in the

background, in respect of the Elgin Western Distributer Road, provided payments are contained within the agreed budget for the scheme.

(c) Financial implications

The District Valuer will assess any compensation payable under the legislation.

The monies for the acquisition of properties and compensation for property losses would be met from an allowance within the Western Distributer Road budget approved by the Economic Development & Infrastructure Services Committee on 6 September 2011 (paras 4 and 5 of the Minute refers). The Capital Allocation in 2011/12 may require to be reviewed if Committee agrees in principle to the early acquisition of property. This would be the subject of a future report to the appropriate Committee(s).

(d) Risk Implications

The current allowance for compensation is based on a desktop exercise in 2008. It is possible that compensation payable may exceed the allowance in the budget; however, an updated assessment will be requested from the District Valuer in early course and will be reported to the next meeting of this Committee.

It is possible that the Moray Council may fail to obtain planning consent for the scheme, or it may fail to proceed for other reasons. In such circumstances, should the Council have acquired property in advance of obtaining planning consent it could sell the assets and recover the majority of its costs in the acquisition of the properties; however, approximately 5-10% (mainly purchasing and selling fees, as well as Stamp Duty Land Tax) would be unrecoverable.

(e) Staffing Implications

None.

(f) Property

The property implications are set out in this report.

(g) Equalities

There are no equalities implications arising from this report.

(h) Consultations

The Corporate Director (Environmental Services), the Head of Housing & Property, the Head of Direct Services, the Design Manager and the Legal Services Manager (Property and Contracts) agree with the recommendations.

Lorraine Paisey, Principal Accountant agrees with the financial implications.

Elgin Members, Councillors Divers, Jarvis, Leadbitter, Russell, Shand and Sharp have been consulted.

11. CONCLUSION

- 11.1 By setting out a clear approach to compensation and the acquisition of property the Council can provide clarity to the affected property owners on the Council's statutory and discretionary position on compensation and the acquisition of property, as a result of the Western Distributor Road scheme. The approach, as laid out in para 9.1 of this report, is intended to minimise the distress of those affected, whilst ensuring the best use of the Council's resources.**

Author of Report: Alex Burrell, Estates Surveyor

Background Papers:

Ref: EL/780/22/rep 111010v2

Signature: _____

Date : 20 October 2011

Designation: Head of Housing and Property

Name: Jill Stewart

Signature: _____

Date : 20 October 2011

Designation: Head of Direct Services

Name: Sandy Ritchie

EXTRACT FROM MINUTE OF MEETING OF THE ECONOMIC DEVELOPMENT & INFRASTRUCTURE SERVICES COMMITTEE

TUESDAY 1 NOVEMBER 2011

COUNCIL OFFICE, ELGIN

PRESENT

Councillor J Russell (Chairman), G Coull, S Cree, J Divers, J Hamilton, G Leadbitter, G McDonald, G McIntyre, I Ogilvie, P Paul, R Shepherd and A Wright.

ALSO PRESENT

Councillors J MacKay, A McKay, M. McConachie, F Murdoch, M Shand and D Stewart.

APOLOGY

An apology for absence was intimated on behalf of Councillor L Bell.

IN ATTENDANCE

The Corporate Director (Environmental Services), the Head of Direct Services, the Head of Development Services, the Transportation Manager, the Planning & Development Manager, the Estates Manager, the Design Manager (Housing & Property), A Duff, Senior Engineer (Traffic), L Paisey, Principal Accountant, A McEachan, Legal Services Manager (Property & Contracts) and the Senior Committee Services Officer, Clerk to the Meeting.

17. WESTERN DISTRIBUTOR ROAD ELGIN (PARA 6)

Under reference to Paragraphs 4 & 5 of the Minute of this Committee dated 6 September 2011 there was submitted a report by the Corporate Director (Environmental Services) inviting the Committee to note the outcomes of initial consultations with property owners directly affected by the scheme and sought approval of an approach for compensation and acquisition of property affected by the Western Distributor Road scheme.

Following consideration the Committee agreed to:-

- (i) note the outcomes of initial consultations with property owners directly affected by the scheme; and
- (ii) recommend to The Moray Council that it:-
 - (i) approves the approach for the compensation and acquisition of properties affected by the Western Distributor Road as detailed in section 9.1 of this report; and

- (ii) approves the Head of Housing and Property be given delegated powers to settle compensation claims, up to a maximum of £100,000, which arise in terms of compensation for losses from the compulsory acquisition by the Council of heritable property, or acquisition by agreement with compulsory powers in the background, in respect of the Elgin Western Distributor Road project, provided that payments can be accommodated within the approved budgets for the scheme.