

REPORT TO: THE MORAY COUNCIL ON 22 MAY, 2013

SUBJECT: ELGIN WESTERN LINK ROAD, COMPULSORY PURCHASE ORDER 2013

BY: CORPORATE DIRECTOR (CORPORATE SERVICES)

1. REASON FOR REPORT

- 1.1 The Council is asked to authorise the making of a Compulsory Purchase Order (CPO) to facilitate the compulsory acquisition of interests in land or buildings for the Elgin Western Link Road Scheme (“the Scheme”) as recommended by Economic Development and Infrastructure Committee on 23 October 2012 and 18 December 2012, and associated actions.
- 1.2 This Report is submitted in terms of Part 4 of the Council’s Administration Scheme – “Matters Excluded from Delegation to Committees”, which relates to the compulsory acquisition of any interest in land or buildings.

2. RECOMMENDATION

- 2.1 The Council is asked to:
- (i) **agree the justification for, and authorise the making of a CPO under Sections 103,104,105,106 and 110 of the Roads (Scotland) Act 1984 in relation to the 23 separate plots detailed in APPENDIX 1 to this report in respect of Elgin Western Link Road;**
 - (ii) **authorise the Head of Direct Services to make reductions in the areas of any of the plots included in the order, or remove any plots from the order, as a result of ongoing detailed design work and negotiations with affected landowners and to determine the date of the making of the CPO;**
 - (iii) **authorise the Head of Legal and Democratic Services to prepare and sign all CPO documentation and to take all necessary steps, including publication of all statutory notices, to secure confirmation of the Order by the Scottish Ministers and the vesting of the Land in the Council;**
 - (iv) **authorise the Estates Manager to arrange for the onward sale or conveyance of any of the CPO subjects required to achieve the Scheme; and**
 - (v) **authorise the Head of Housing and Property Service to proceed with the transfer of the land shown on the plan at APPENDIX 3**

from the Housing Revenue Account to the General Services Account for no value, subject to approval of the Scottish Government.

3.0 BACKGROUND

3.1 Chronology

A summary of Committee Decisions relating to the Elgin Western Distributor Road/Western Link Road is attached at **APPENDIX 2**. The route has featured in the Local Plan for many years and is a key element of the transport infrastructure supporting economic development.

3.2 Recent Committee Decisions

On 18 December 2012 Economic Development and Infrastructure Services Committee (Para 8 of the draft Minute refers): -

- (i) noted the content of the draft Statement of Reasons, as set out in Appendix 2 of the report;
- (ii) agreed there is justification for making a Compulsory Purchase Order (CPO) over the land detailed in Appendix 1 of the report; and
- (iii) recommended to the Moray Council that it promotes the CPO.

4. PROPERTY DETAILS

4.1 The Scheme design is now sufficiently advanced that the land required to construct the Scheme is known. There are 23 separate land interests covered by the CPO and required for the Scheme. A list of these properties, including plans, is attached as **APPENDIX 1** to this report.

4.2 In line with Government guidance it is good practice to seek to acquire property by agreement at the same time as progressing a CPO. The majority of owners who are potentially affected by the CPO have indicated their willingness to negotiate with the Council. Delivery of the Scheme would however be compromised if agreement couldn't be reached with any of these owners, hence the need to progress the CPO. The property at 78 Wittet Drive was purchased in 2010 in anticipation of the Scheme proceeding. As reported at Economic Development and Infrastructure Services Committee on 18 December 2012 negotiations have taken place with other land owners affected by the CPO to try to reach agreement and acquisition of the property affected. On 30 April 2013 the Economic Development and Infrastructure Services Committee approved the purchase terms of 11 Wittet Drive.

4.3 Part of the land required for the Scheme (shown on the plan at **APPENDIX 3**) is owned by the Council on the Housing Revenue Account (HRA). It within a larger area designated in the local plan for housing however due to planning

restrictions and a contractual obligation upon the Council the land required by the Scheme has no development potential. The area of the HRA land required for the Scheme will require to be transferred to the General Services Account, a process which requires consent of the Scottish Ministers.

- 4.4 Plots 20 and 21 currently form part of Wards Road which, when the Scheme has been constructed, will need to be stopped up. Ownership of the solum of the former road would then pass to the former owners. These areas are unlikely to support future development and there is a danger that they become derelict and a maintenance burden. They have been included in the CPO so the Council can take title to them and pass title on to the adjacent residential properties to be incorporated as part of their garden ground. There may be other small parcels of ground included in the CPO which, following construction, do not need to be retained by the Council and can be passed on to the adjacent owners. Authority is therefore sought in recommendation (iv) for these onward conveyances.

5.0 COMPULSORY PURCHASE ORDER PROCEDURE

The CPO procedure is summarised as follows:-

- 5.1 The Scottish Ministers give advice on drafts of the CPO documents. The Council agrees to make the CPO (and the CPO is signed).
- 5.2 The Council advertises the making of the CPO in a local newspaper for two successive weeks and serves Notice of the making of the Order on those affected.
- 5.3 The Council sends the CPO, the Council's "Statement of Reasons" and supporting documents to the Scottish Ministers for consideration.
- 5.4 Anyone who wishes to object to the Order has at least 21 days from the date the Authority first advertised the Order to make representations to the Scottish Ministers.
- 5.5 If no objections are received the Scottish Ministers may decide to confirm the Order (with or without modifications) or refuse to confirm the Order.
- 5.6 Ministers issue their decision to the Authority and all objectors.
- 5.7 Where objections from statutory objectors are maintained, an enquiry will be held before an independent Reporter.
- 5.8 The Reporter then writes a report with recommendations and sends this to the Scottish Ministers. The Scottish Ministers may decide to confirm the Order (with or without modifications) or refuse to confirm the Order.

- 5.9 If Scottish Ministers confirm the Order then the Council publish a Notice of Confirmation in a newspaper and serves this on all statutory objectors. There is then a six week period within which the legal validity of the Order can be challenged in the Court of Session.
- 5.10 If there are no challenges, the Council can then serve notice to all parties with a notifiable interest in any property affected by the CPO declaring its intention to take possession and legal Title to the property after 28 days. The Council reaches agreement with those affected by the Order over the level of compensation due and pays compensation. If there is a dispute either party can refer it to the Lands Tribunal for Scotland.
- 5.11 Agreement can still be reached to acquire CPO land on a voluntary basis at any stage in the process.

6.0 JUSTIFICATION FOR THE USE OF A COMPULSORY PURCHASE ORDER

- 6.1 In summary the justification for the use of a CPO is that:
- 6.1.1 the transportation, housing and economic benefits of the Scheme outweigh the effects of compulsory acquisition on individual landowners.
- 6.1.2 the issue discussed at 4.2 above, delivery of the Scheme is compromised if agreement cannot be reached on purchase terms with individual landowners. Negotiations could be protracted and ultimately fail. This would delay implementation of the Scheme, potentially increase costs and extend the period of uncertainty which a local residents who are affected by the Scheme face.
- 6.2 The details of the Scheme development, its policy context, planning context and public consultation are contained in the Council's "Statement of Reasons".
- 6.3 This is a statutory document which requires to be submitted to the Scottish Government along with the CPO. This document also explains the benefits of the Scheme and how the Council considers that these outweigh the individual land interests of those affected by the CPO.
- 6.4 A draft of the Statement of Reasons was noted by Economic Development and Infrastructure Services Committee on 18 December 2012 (Para 8 of the Minute refers). Amendments have been made to the draft following dialogue with the Scottish Government and it is normal for amendments to be agreed up to the point of final submission. A copy of the latest draft is attached as **APPENDIX 4**.

6.5 **HUMAN RIGHTS**

The Council has to balance the wider public interest in the benefits of the Scheme (detailed at 6.1.1 above) against the Human Rights of the individual owners of property affected by the Scheme:

Article 1: *“every person is entitled to the peaceful enjoyment of his possessions” ; “no-one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by Law”.*

Article 8: *“everyone has the right to respect for his private and family life and his home” ; “there shall be no such interference with the exercise of this right except such as in accordance with the Law”.*

Interference with individuals’ property rights has to be proportionate.

6.6 It is considered that the benefits of the Scheme to the residents of Elgin and the wider population of Moray outweigh the individual property interests of those affected.

6.7 Although the Scheme would require demolition of two individual properties, the twenty one remaining plots comprise garden ground and development land only. Every effort has been made in the Scheme design to make alternative provision where a property interest is adversely affected. Where alternative provision is not feasible then compensation can be claimed by property owners. It is considered that the CPO is proportionate in its effect on property rights.

7.0 **THE PLANNING PROCESS**

The relative timing of CPO and planning application was debated by Economic Development and Infrastructure Services Committee on 23 October 2012 (Para 4 of the Minute refers) and again 18 December 2012 (Para 8 of the draft Minute refers). The Committee agreed to recommend that the Moray Council promote the CPO prior to the planning application being determined. As this is only a recommendation it does not bind this meeting of the Council.

It is anticipated that the planning application for the Scheme will be submitted in late 2013. It could take between three and eighteen months for the planning application to be determined. It is considered prudent to proceed with a CPO concurrently with the submission of the planning application for the following reasons:

- A CPO process has potential to take longer than the planning process. A conservative estimate for the length of the CPO process, if the Scottish Ministers cause a Public Inquiry to be held, is 2 years. If the Council waited until the planning consent was obtained before starting the CPO process then the construction start date for the Scheme would be delayed with extended uncertainty for local residents and potential for increased costs.

- Scottish Government Circular 6/2011 on CPO's states that :
 - *Cl. 24 It may not always be possible or appropriate for the authority to wait until the full details of its proposals have been developed, and planning permission obtained, before it proceeds with the order.*
 - *Cl. 25 If planning permission will be required, and has not yet been granted, the authority should be satisfied that there is no obvious reason why planning permission might not be granted. In particular it should be satisfied that the proposals that are the subject of the planning application are broadly in accordance with, or not obviously in conflict with, the development plan for the area.*
- The status of the Western Link Road has been identified in the Local Plan for over 10 years.
- If the CPO is confirmed by the Scottish Ministers, but planning permission is subsequently refused, then the Council do not need to act on the CPO. A CPO would fall after 3 years if no steps had been taken by the Council to take title.

8. SUMMARY OF IMPLICATIONS

(a) Single Outcome Agreement/Service Improvement Plan

The development of the Western Link Road is in line with the National Outcome 1 and the Local Outcome 3; (Moray will benefit from an improved and safer transportation infrastructure).

The Western Link Road will unlock land designated for affordable housing. This complies with National Outcome 9 (we will live in a world designed, sustainable places where we are able to access the amenities and services we need). Local Priority 4 (Housing and Homelessness – more people in Moray will have access to affordable housing).

(b) Policy and Legal

The CPO is being promoted under Sections 103-106 & 110 of the Roads (Scotland) Act 1984 which empower the Council, as a Roads Authority, to acquire ground compulsorily for roads schemes and bridges.

The procedure for making the Order is governed by the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947.

Additional guidance has been published by the Scottish Government which the Council is following closely. This guidance focuses in early engagement

with those affected by the CPO and the provision of clear information and guidance on the CPO process.

(c) Financial Implications

The wider financial implications of promotion of the Western Link Road Scheme have been dealt within the Reports to the Economic Development and Infrastructure Services Committee for which there is provision in the Capital Plan. The costs of promotion of the CPO have been included in the wider scheme costs

Each of the property owners detailed in the CPO will be entitled to compensation for the loss of their interest in land. If agreement cannot be reached with the individual landowners on the amount of compensation, then either party may refer the matter to the Lands Tribunal for Scotland.

(d) Risk Implications

Although the majority of property owners have stated they would be prepared to negotiate with the Council, there is a possibility that some may object to the proposals. Without a CPO this could prevent the scheme from being delivered.

If the CPO is promoted and agreement is subsequently reached with all affected owners on purchase terms then CPO costs would become abortive costs.

If objections are received to the CPO that are not subsequently withdrawn then the Public Inquiry process could extend the implementation date of the Scheme by up to two years.

If planning consent for the Scheme is not obtained then the need to continue with the CPO process can be reviewed, and the process halted if appropriate.

(e) Staffing Implications

The costs of making the CPO and administering the process can be accommodated within the existing staff resources.

(f) Property

As detailed above.

(g) Equalities

There are no equalities arising directly from this Report.

(h) Consultations

Stephen P. Cooper, Head of Direct Services, Alex Burrell, Estates Surveyor; Graeme Davidson, Housing Strategy Manager; Margaret Wilson, Head of Financial Services; Frank Knight, Senior Engineer (Design) and Dave Gowans, Consultancy Manager and have been consulted and their comments incorporated into this report.

9. CONCLUSION

- 9.1 The successful delivery of the Scheme will require the acquisition of a number of property interests. Whilst the intention is to try and reach a negotiated settlement where possible, there is a risk that, without a CPO, the delivery of the Scheme would be compromised. It is considered that the public benefits of the Scheme outweigh the individual property owners' interests and that the CPO is reasonable and proportionate.**
- 9.2 Economic Development and Infrastructure Services Committee agrees this course of action and recommends that The Council proceed with the CPO.**

Author of Report: Alasdair McEachan, Legal Services Manager (Property and Contracts) and Dave Gowans, Consultancy Manager

Background Papers:

Ref: AMcE/AM/

THE MORAY COUNCIL

EXTRACT FROM MINUTE OF MEETING OF THE MORAY COUNCIL

WEDNESDAY 22 MAY 2013

COUNCIL OFFICE, ELGIN

PRESENT

Councillors J S Cree (Convener), A G Wright (Council Leader), G G Alexander, J S Allan, G S Coull, J Cowe, L Creswell, J A Divers, P Gowans, M Howe, B Jarvis, G Leadbitter, J Mackay, M J McConachie, G McDonald, E M McGillivray, A C McKay, A J McLean, S M Morton, F Murdoch, P Paul, , D G Ross, M Shand, R H Shepherd, A A Skene and C P Tuke.

IN ATTENDANCE

The Chief Executive, the Corporate Director (Corporate Services), the Corporate Director (Environmental Services), the Corporate Director (Education and Social Care) the Head of Legal and Democratic Services, the Head of Financial Services, the Head of Human Resources and ICT, the Head of Housing and Property, the Head of Direct Services, the Senior Engineer (Design), A McEachan, Legal Services Manager (Property and Contracts), the Consultancy Manager and the Democratic Services Manager as Clerk to the Meeting.

1. DECLARATION OF GROUP DECISIONS

In terms of Standing Order 20 and the Councillor's Code of Conduct Councillor Leadbitter declared a personal interest in Item 9 "Elgin Western Link Road, Compulsory Purchase Order 2013" (paragraph 10 of the Minute refers). The Meeting noted that there were no other declarations from group leaders or spokespersons in regard to any prior decisions taken on how members will vote on any item on the Agenda nor any declarations of Members Interest in respect of any Item on the Agenda.

2. RESOLUTION

The meeting resolved that under Section 50A (4) and (5) of the Local Government (Scotland) Act 1973, as amended, the public and media representatives be excluded from the meeting for Items 14 of business on the grounds that they involve the likely disclosure of exempt information of the class described in Paragraph 1 of Part 1 of Schedule 7A of the Act.

<u>Para No of Minute</u>	<u>Para No of Schedule 7A</u>
13	1 & 9

5. NOTICE OF MOTION

There was submitted a Notice of Motion by Councillor Ross, seconded by Councillor Allan in the following terms:

“That Moray Council agrees to submit a planning application for scenario C as detailed in Item 12(a) of the committee papers to Full Council on the 27th March 2013. This option is referred to as “High School and Low Cost Access to Affordable Housing” and provides the cheapest option to access to Elgin High School and affordable housing.

If this motion is agreed it would see an application for access to Elgin High School and the affordable housing only, submitted at the same time as an application for the Western Link Road.”

Under the terms of Standing Order 85, the Chairman confirmed following legal advice that as the Notice of Motion seeks to alter a decision of the Council within six months of its adoption, a relevant and material change in circumstances was required to be identified and a vote taken.

Councillor Ross stated that although he felt there was no need to suspend standing orders, in his opinion the recent discussions by the Elgin High School Strategy Group where it was stated that the planning application in respect of the new school, that includes the new access road, was to be submitted in July 2013 and the recent announcement made by the Scottish Government in relation to a by-pass for Elgin as part of the duelling works for the A96, constituted a material and relevant change in circumstances and moved that the Council agree to suspend standing orders.

The Chairman stated that in accordance with Standing Orders, the Meeting should now vote on the issue of the suspension of standing orders and if it is decided to suspend standing orders the Meeting can continue the debate in regard to the Notice of Motion and therefore no amendment was required and sought legal confirmation in respect of this course of action.

In response, the Head of Legal and Democratic Services advised that a vote for or against the suspension of standing orders was the correct course of action with the reasons for suspension being those outlined by Councillor Ross representing the motion and the amendment being against suspension. She further advised that a two thirds majority would be required in order for the suspension to be carried, which would be eighteen in this instance.

Thereafter, the Chairman asked that the vote be taken.

On a division, there voted:

For the Motion (17)	Councillors Ross, Allan, Coull, Divers, Gowans, Howe, Jarvis, Leadbitter, J. Mackay, McConachie, McDonald, McGillivray, McLean, Morton, Paul, Shand and Tuke
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For the Amendment (9) Councillors Cree, Wright, Alexander, Cowe, Creswell, A. McKay, Murdoch, Shepherd and Skene

Abstentions (0)

Accordingly, in terms of Standing Order 86, the Committee agreed not to suspend Standing Order 85 as two-thirds of the members of the Council present did not agree the matter merited a suspension and thereby the Motion fell.

10. ELGIN WESTERN LINK ROAD, COMPULSORY PURCHASE ORDER 2013

There was submitted a report by the Corporate Director (Corporate Services) asking the Council to authorise the making of a Compulsory Purchase Order (CPO) to facilitate the compulsory acquisition of interests in land or buildings for the Elgin Western Link Road Scheme (“the Scheme”) as recommended by Economic Development and Infrastructure Committee on 23 October 2012 and 18 December 2012, and associated actions.

Following lengthy discussion and a short adjournment to seek clarification on the process that would be required to be undertaken by the Council in regard to the making of a Compulsory Purchase Order, Councillor Ross, seconded by Councillor Allan, moved that the council do not proceed with the making of a Compulsory Purchase Order at this time but defer the matter until the planning application in respect of the Elgin Western Link Road has been determined.

As an amendment, Councillor Morton, seconded by Councillor Wright, moved approval of the recommendations to proceed with the making of a Compulsory Purchase Order subject to authorisation of general vesting of the Land in the Council as required to effect compulsory transfer being brought back to the Council for final approval.

On a division, there voted:

For the Motion (10)	Councillors Ross, Allan, Coull, Gowans, Howe, McConachie, McDonald, McLean, Paul and Shand
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For the Amendment (15)	Councillors Morton, Wright, Alexander, Cowe, Cree, Creswell, Divers, Jarvis, J Mackay, McGillivray, A McKay, Murdoch, Shepherd, Skene and Tuke
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Abstentions (0)

Accordingly, the Amendment became the finding of the Meeting and the Council agreed:-

- (i) the justification for, and authorised the making of a CPO under Sections 103, 104, 105, 106 and 110 of the Roads (Scotland) Act 1984 in relation to the 23 separate plots detailed in Appendix 1 to the Report in respect of Elgin Western Link Road;
- (ii) to authorise the Head of Direct Services to make reductions in the areas of any of the plots included in the order, or remove any plots from the order, as a result of ongoing detailed design work and negotiations with affected landowners and to determine the date of the making of the CPO;

- (iii) to authorise the Head of Legal and Democratic Services to prepare and sign all CPO documentation and to take all necessary steps, including publication of all statutory notices, and to secure confirmation of the Order by the Scottish Ministers subject to authorisation of general vesting of the Land in the Council as required to effect compulsory transfer being brought back to the Council for final approval;
- (iv) to authorise the Estates Manager to arrange for the onward sale or conveyance of any of the CPO subjects required to achieve the Scheme; and
- (v) to authorise the transfer of the land shown on the plan at Appendix 3 from the Housing Revenue Account to the General Services Account for no value, subject to approval of the Scottish Government.

Councillor Leadbitter rejoined the meeting at this juncture.