

**REPORT TO: ECONOMIC DEVELOPMENT AND INFRASTRUCTURE
COMMITTEE ON 23 OCTOBER 2012**

SUBJECT: ELGIN WESTERN LINK ROAD – PROGRESS UPDATE

BY: HEAD OF DIRECT SERVICES

1. REASON FOR REPORT

- 1.1 To ask Committee to note progress on the Elgin Western Link Road including the recent public consultation and process for making a Compulsory Purchase Order (CPO).
- 1.2 This Report is submitted to Committee in terms of G (18) of the Council's Administrative Scheme relating to the preparation and implementation of traffic management schemes.

2. RECOMMENDATION

- 2.1 **It is recommended that Committee agree that, with regard to the Elgin Western Link Road, detailed design changes and a Draft CPO including Statement of Reasons be submitted to Moray Council 14 November 2012 subject to there being sufficient time to take into account any design changes emerging from the recent public consultation.**
- 2.2 **It is recommended that Committee agree that in the event that more time is required to analyse and consider the consultation responses , detailed design changes and a Draft CPO including Statement of Reasons will be submitted to this Committee on 18 December 2012 with a recommendation that Committee agrees the design changes, land requirements and the Draft Statement of Reasons with a recommendation to The Moray Council that it makes the Order.**

3. BACKGROUND

- 3.1 It is a statutory requirement for Local Authorities to prepare Local Plans for their area. The Western Link Road has featured as part of planned infrastructure improvements for Elgin in Moray Council's Local Plans since 2000, and the road network has been progressively implemented as development has been progressing. On 6 September 2011 this Committee agreed to note the economic development and planning issues and associated risks relating to the scheme (Paragraphs 4 and 9 of the Minute refers).
- 3.2 On 1 November 2011 this Committee (Para 17 of the Minute refers) agreed the approach to land acquisition and compensation that included a Compulsory Purchase Order and that the Estates Manager is authorised to negotiate the acquisition of the lands by agreement in advance of any Order.
- 3.3 On 13 March 2012 this Committee approved the Project Execution Plan (Para 18 of the Minute refers).

3.4 On 1 June a stakeholder workshop was held to review the design prior to the start of that process. The aim was to engage with a range of stakeholders so that as far as practicable their needs were taken into account. The workshop led to a number of suggested changes and ideas for change that were, in turn, displayed at a public exhibition on 10 and 11 October 2012 and feedback from the exhibition is being considered at the time of drafting of this report.

3.5 It had been intended to submit a report to this Meeting setting out the land to be acquired by CPO and seeking approval for a draft "Statement of Reasons" for making the CPO. However it would be inappropriate to progress to this stage until the results of the public consultation can be taken into account. This is because design changes may affect the land requirement.

Next Steps and the CPO Procedure

3.6 The Council is progressing with land negotiations in advance of a CPO with a view to obviating the need for it. However there is no guarantee that all negotiations will be successful. In order to maintain progress and minimise legal risks associated with the process it is proposed to submit the CPO to The Moray Council on 14 November 2012 and ask the Council to make the Order.

3.7 In that event, t this Committee would not have the opportunity to consider any design changes emanating from the workshop and recent public consultation that affect land requirements. Instead these matters would be reported to The Moray Council along with the Draft Order.

3.8 At the time of drafting this report it would be inappropriate to prejudge the feedback from the public consultation and its impact on the design and in turn land requirements. It is critical that this work is afforded sufficient time, which introduces a risk that reporting to The Moray Council as in 3.6 above will not be achievable. In that event it is proposed to submit any design changes, land requirements and the Statement of Reasons to the next Meeting (on 18 December 2012) asking Committee to recommend that The Moray Council proceeds to make the Order at its meeting on 30 January 2013.

3.9 Part of the land that will covered by the CPO is owned by the Council on the Housing Revenue Account. It has a housing designation but cannot be developed without the Scheme. This part of the HRA land required for the Scheme will require to be transferred to the General Services Account.

3.10 The CPO procedure is summarised as follows:-

- Full justification and Statement of Reasons will be submitted to The Moray Council to support the making of the order.
- The Council advertises the making of the Order in a local newspaper for two successive weeks and serves Notice of the making of the Order on those affected.

- The Council sends the Order, the Council's "Statement of Reasons" and supporting documents to the Scottish Ministers for consideration.
 - 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.
 - If no objections are received the Scottish Ministers may decide to confirm the Order (with or without modifications) or refuse to confirm the Order.
 - Ministers issue their decision to the Authority and all objectors.
 - Where objections from statutory objectors are maintained, a Hearing or a Public Local Inquiry will be held before an independent Reporter.
 - The Reporter prepares a report with recommendations to the Scottish Ministers who may confirm the Order (with or without modifications) or refuse to confirm the Order.
 - 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.
 - If there are no challenges, the Council can then take possession and legal Title to the property. 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 the matter to the Lands Tribunal for Scotland.
- 3.11 The details of the Scheme development, its policy context, planning context and public consultation will be detailed in the Council's "Statement of Reasons" which must be submitted to the Scottish Ministers along with the Order.
- 3.12 Consultation with the Scottish Government over the detail of the Statement of Reasons will be carried out to ensure that the Order contains the information they require.
- 3.13 The Statement of Reasons will set out the benefits of the Scheme and how these outweigh the individual land interests of those affected by the CPO.
- 3.14 The Council must consider the applicability of the Humans Rights Act 1998 and in particular, Article 1 of the First Protocol, which provides that "*every person is entitled to the peaceful enjoyment of his possessions*" and "*no-one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by Law*". Article 8 also provides that "*everyone has the right to respect for his private and family life and his home*" and "*there shall be no such interference with the exercise of this right except such as in*

accordance with the Law and necessary and in a democratic society for the prevention of disorder of crime, for the protection of health and morales, or for the protection of the rights and freedoms of others”.

- 3.15 When considering the Order, the Council must have regard to the impact which these proposals may have in respect of these Articles. Interference with individuals' property rights has to be proportionate to the legitimate aim being pursued.

4. SUMMARY OF IMPLICATIONS

(a) Single Outcome Agreement/Service Improvement Plan

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

The Scheme will unlock land designated for affordable housing. This complies with National Outcome 10 (We will live in well 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 Order will be being promoted under Sections 103 to 106 of the Roads (Scotland) Act 1984 which empower the Council, as a Roads Authority, to acquire land 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. This guidance focuses in early engagement with those affected by the Order and the provision of clear information and guidance on the Order process.

(c) Financial Implications

The wider financial implications of promotion of the Scheme have been dealt within the Reports to the Economic Development and Infrastructure Services Committee detailed above. The costs of promotion of the CPO have been included in the wider scheme costs.

An allowance for land compensation is included in the Capital Plan

(d) Risk Implications

A number of property owners have indicated that they would be prepared to negotiate with the Council, but some may object to the Order. Without the Order the Scheme might not be deliverable because any individual can refuse to sell. There remains a risk of delay and extra cost should objections result in a Public Local Inquiry, and a risk that the Scottish Ministers may refuse to confirm the Order. There is risk that the recommendation to The Moray Council to make the Order will be delayed until 30 January 2012. There reason is given in 3.8 above

(e) Staffing Implications

There are no staffing implications.

(f) Property

Property implications are set out in this report but full details of land required will form part of the Draft Order.

(g) Equalities

There are no equalities implications.

(h) Consultations

Alex Burrell, Estates Surveyor, Graeme Davidson, Housing Strategy Manager and Lorraine Paisey, Principal Accountant have been consulted and their comments incorporated into this report.

5. CONCLUSION

5.1 The successful delivery of the Scheme will require the acquisition of a number of property interests. It is critical that, prior to proceeding with a CPO, the Council takes into account the recent public consultation. This may delay making the Order.

5.2 While the intention is to reach a negotiated settlement where possible, there is a risk that, without the Order, 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 a CPO would be reasonable and proportionate.

Author of Report: Dave Gowans, Consultancy Manager

A McEachan, Legal Services Manager (Property and Contracts)

Background Papers:

Ref:

: