

**REPORT TO: ECONOMIC DEVELOPMENT AND INFRASTRUCTURE SERVICES COMMITTEE ON 18 DECEMBER 2012**

**SUBJECT: ELGIN WESTERN LINK ROAD – REPORT 2: COMPULSORY PURCHASE ORDER**

**BY: CORPORATE DIRECTOR: ENVIRONMENTAL SERVICES**

**1. REASON FOR REPORT**

- 1.1 The purpose of this report is to consider Compulsory Purchase Order (CPO) proposals for the Elgin Western Link Road Scheme (“the Scheme”).
- 1.2 This report is submitted to Committee in terms of Section III (G) (9) of the Council's Administrative Scheme relating to making recommendations to the Council on the acquisition or sale of land or buildings and G (16) to exercise all functions of the Council as roads authority.

**2. RECOMMENDATION**

**2.1 It is recommended that Committee:-**

- a) **note the content of the draft Statement of Reasons attached at APPENDIX 2;**
- b) **agree there is justification for making a Compulsory Purchase Order (CPO) over the land detailed in APPENDIX 1 and;**
- c) **recommend to the Moray Council that it promotes the CPO.**

**3. BACKGROUND**

- 3.1 On 1 November 2011 this Committee agreed the approach to land acquisition and compensation that included a Compulsory Purchase Order (CPO) (Para 17 of the Minute refers).
- 3.2 Reference is made to the update report submitted to this Committee on 23 October 2012 (Para 4 of the minute refers) which set out the background to the CPO process. The committee agreed that (following consideration of consultation responses) detailed design changes, land requirements and the draft statement of reasons be considered at this meeting.
- 3.3 The Scheme design is now sufficiently advanced that the land required to construct the Scheme can be ascertained subject only to minor potential variations. There are twenty two plots with twenty six separate land interests covered by the CPO and required for the Scheme. **APPENDIX 1** to this report contains plans of each of these interests.
- 3.4 As part of the CPO process the Council is required to prepare a “Statement of Reasons”. This statutory document sets out the justification for making the CPO and is submitted to the Scottish Ministers, along with the CPO, to help them decide whether or not the CPO should be confirmed. It sets out the

planning and policy context of the Scheme, details of public consultation, public benefits of the Scheme and how, in the Council's submission, these outweigh the individual land interests of those affected by the CPO.

- 3.5 A copy of the current draft Statement of Reasons for the Scheme is attached at **APPENDIX 2**. A copy has been submitted to the Scottish Ministers and, at the time of preparation of this report, a response was still awaited. It is normal for there to be some adjustment of this document prior to its submission with the CPO. Members should note that all the appendices are currently draft and will be finalised prior to being submitted to The Council.
- 3.6 The property at 78 Wittet Drive was purchased in 2010 following approval by the Policy and Resources Committee on 22 September 2009 (Para 19 of the Minute refers) and in anticipation of the Scheme proceeding. As agreed by this Committee on 1 November 2011 negotiations have taken place with land owners affected by the Order to try to reach agreement on acquisition of the property affected in advance of the Order.
- 3.7 Plot 18 is owned by the Council on the Housing Revenue Account. It is part of a larger area of ground which has a housing designation but which cannot be developed without the Scheme. The part of the HRA land required for the Scheme will require to be transferred to the General Services Account. A separate statutory process is required for this transfer.
- 3.8 It is anticipated that a planning application for the Scheme will be submitted in spring 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:
- The CPO process has potential to take longer than the planning process. A conservative estimate for length of the CPO process, if the Scottish Ministers cause a Public Inquiry to be held, is 2 years. If the Council waited until after 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 an 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 then the Council do not need to act on it. A CPO would fall after 3 years if no steps had been taken by the Council to take title.

#### **4. SUMMARY OF IMPLICATIONS**

##### **(a) Single Outcome Agreement/ Service Improvement Plan**

The creation 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 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).

The Moray Economic Strategy acknowledges the importance of providing an effective road network to distribute traffic across Elgin.

##### **(b) Policy and Legal**

The Order is being promoted under Sections 103 to 106 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.

##### **(c) Financial implications**

The costs of promotion of the Order have been included in the wider scheme costs however the costs associated with a Public Local Inquiry have not been specifically identified. An estimate has been allowed for in the project risk register.

The budget for land compensation is identified in the Capital Plan.

##### **(d) Risk Implications**

The successful delivery of the Scheme will require the acquisition of a number of property interests. Whilst the intention is to reach a negotiated settlement where possible, there is a risk that, without the Order, delivery of the Scheme would be compromised.

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.

**(e) Staffing Implications**

The Order can be made within the existing staff resources. If a Public Local Inquiry is required then this will place further time demands on staff.

The District Valuer has been appointed to negotiate property acquisition/compensation on behalf of the Council with affected parties.

**(f) Property**

As detailed above.

**(g) Equalities**

There are no equalities issues arising from this report.

**(h) Consultations**

A Burrell, Estates Surveyor, has been consulted and comments incorporated into the report.

The Housing Strategy Manager has been consulted and has no comments to make.

L Paisey, Principal Accountant has been consulted and is in agreement with the financial implications.

A McEachan, Legal Services Manager has been consulted and comments incorporated into the report.

**5. CONCLUSION**

**5.1 The successful delivery of the Scheme will require the acquisition of a number of property interests. Whilst the intention is to reach a negotiated settlement where possible, there is a risk that, without the Order, delivery of the Scheme would be compromised. It is considered**

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**that the public benefits of the Scheme outweigh the individual property owners' interests and that the Compulsory Purchase Order is reasonable and proportionate.**

Author of Report: F Knight, Senior Engineer (Design)

Background Papers:

Ref: