

Report of the Strategic Director – Place to the meeting of Executive to be held on 7th March 2017

Subject:

West Yorkshire+ Transport Fund - Harrogate Road / New Line Junction and Hard Ings Road Improvement, Keighley Compulsory Purchase Order (Highways Act 1980) Amendment.

Summary statement:

This report seeks Executive's approval to:

- Modifications to the CPO boundary plans previously approved for the West Yorkshire+ Transport Fund schemes of Harrogate Road / New Line junction Improvement and Hard Ings Road Improvement, Keighley;
- The use of powers under Section 40 of the Road Traffic Regulation Act 1984 (RTRA); and
- Advertise the disposal of existing public open space and the appropriation of replacement public open space on the Harrogate Road / New Line scheme.

Finally, in recognition of the on-going nature of the land assembly negotiations for these projects the report seeks Executive's approval to the delegation of the determination of any further amendments to the extents of the CPO to the Strategic Director of Place in consultation with the Portfolio Holder.

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Overview & Scrutiny Area:

Environment & Waste



1. SUMMARY

1.1. This report seeks Executive's approval to:

- a) Modifications to the CPO boundary plans previously approved for the West Yorkshire+ Transport Fund schemes of Harrogate Road / New Line junction Improvement and Hard Ings Road Improvement, Keighley which are necessitated through on-going development of scheme proposals;
- b) The use of powers under Section 40 of the Road Traffic Regulation Act 1984 (RTRA) to facilitate the compulsory acquisition of land for the purposes of replacement car parking facilities on the Harrogate Road / New Line scheme; and
- c) Advertise the disposal of existing public open space and the appropriation of replacement public open space on the Harrogate Road / New Line scheme.

1.2. Finally, in recognition of the on-going nature of the land assembly negotiations for these projects the report seeks Executive's approval to the delegation of the determination of any further amendments to the extents of the CPO to the Strategic Director of Place in consultation with the Portfolio Holder.

2. BACKGROUND

2.1. A pre-requisite for lodging any Compulsory Purchase Order with the Secretary of State is that the Council must demonstrate *vis-à-vis* that it has:

- a) Approved the use of all appropriate and necessary powers associated with the CPO, rather than relying on general powers of CPO.
- b) Accurately identified all land interests/properties which are to be included within the CPO boundary.

This report is therefore presented to Executive to ensure that both these pre-requisites can be complied with prior to submission of the CPOs for both named schemes to the Secretary of State.

Harrogate Road / New Line Junction

2.2. During the past fourteen months (since the December 2015 resolution) extensive and often complex negotiations have continued to take place with the potentially affected land owners in order that the necessary parcels of land and access rights can be acquired without recourse to CPO processes. Throughout this process advice on the potential financial cost of acquisition of property has been supplemented by consideration of compensation payments for businesses adversely affected by the proposals. In a number of cases the level of compensation payment to which a business may be entitled far outweighs that of the value of actually purchasing the land concerned. Therefore Officers have reviewed the previous CPO boundary to identify any additional areas of land whose acquisition could be used to mitigate compensation payments.

- 2.3. In addition to the mitigation of compensation a number of alterations to the extents of the CPO previously approved by Executive were made because of the following reasons:
- a) Review of the extent to which it is necessary to include in the CPO sufficient land to carry out the works (i.e. to facilitate working space), to obtain title to land and permanent rights to support the scheme; and
 - b) Identification of areas of contested land under adopted highway which are un-registered with the Land Registry.
- 2.4. In general the proposed changes to the CPO boundary extents for the reasons above have resulted in three parties being removed from the CPO process, the scope of land for a number of existing parties increasing to take account of the working space and registered title of highway land issues and one new parcel of land being introduced into the CPO scope.
- 2.5. Whilst Executive has previously approved the use of the requisite powers under Sections 239, 240, 246 and 250 of the Highways Act 1980 in relation to the CPO the omission of powers under Section 40 of the Road Traffic Regulation Act 1984 from the previous resolution prevents the Council from acquiring land to provide compensatory off-street parking; this is seen as essential to mitigation of a number of compensation issues.

Hard Ings Improvement, Keighley

- 2.6. In relation to the revised CPO red line boundary for the Hard Ings Road improvement scheme, Keighley this was a result of:
- a) Continued design and detailed assessment of requirements for temporary working space and long-term rights;
 - b) Clarification of ownership boundaries and rights of adjoining land owners and occupiers resulting from the on-going land referencing process and enquiries with affected parties; and
 - c) Clarification of the ownership of and rights over areas of highway forming part of the former trunk road network.
- 2.7. The A650/A629 was formally trunk road managed by the Department for Transport. Following de-trunking in 2008 this is now a local road managed by the Council as Highway Authority, however title of the land on which the road is situated is still registered to the Secretary of State for Transport and has not yet been transferred to the Council. The land referencing exercise undertaken in preparation for the Hard Ings Road CPO has identified that parts of this land are also unregistered and in 'unknown ownership' and that adjoining businesses along part of the A629 have Rights that could be temporarily affected by construction works. The original CPO boundary plan excluded the former trunk road land. Given the complexities which have been identified it is therefore seen as expedient to include the trunk road land in the CPO boundary.

3. OTHER CONSIDERATIONS

- 3.1. In considering whether to confirm a CPO the Secretary of State will need to be convinced that there is a compelling case in the public interest for compulsory acquisition as use of such powers are to be considered a matter of last resort. Members should reach a similar decision before authorising its making on the balance of the information contained in this report.
- 3.2. The boundary of the CPO's Order Land is shown outlined in red on the Plans in Appendices 1 and 2. All necessary land and rights within the red line boundary which need to be acquired for the scheme will be acquired under the CPO to provide a clean title to the land. This includes land, buildings, plant, equipment, cables, pipes, rights and interest under, on and over the land.
- 3.3. An Order Map and Schedule of Ownerships has been drafted following a land referencing exercise, and will be finalised and published as part of the process for preparing the Order.
- 3.4. If the CPO resolutions are made, this will be recorded in the Local Land Charges Register and disclosed on searches.

Statement of Reasons for the Compulsory Purchase Order

- 3.5. Although the Statement of Reasons document is non-statutory, this is an important document and is served with the statutory notices when the Order is made. It describes the land within the Order boundary, gives an outline of the case for the acquisition and of the proposed use and development, with details of the planning position, special considerations (e.g. listed buildings) policies and views of government departments, proposals relocation and details of any related order such as Highway Stopping Up and Closures.
- 3.6. At this stage of the process, in accordance with Government guidance, a draft statement of reasons for the CPO has been prepared. A final statement will be produced and will be served on Landowners with the statutory notices when the Order is actually made.

Public Open Space

- 3.7. As part of the Harrogate Road / New Line project an area of existing public open space adjacent to New Line which is currently in the ownership of the Council will need to be incorporated into the road widening scheme. Land which is in the ownership of the Council should not in practice be placed in the CPO unless there is an impediment in title which needs to be compulsorily acquired. As no such impediment exists for Council needs to make provision to dispose of the land for the road widening by relying on the provisions of the Local Government Act 1972 which also obviates the need to otherwise apply to the Secretary of State for Communities and Local Government for a dispensation that special Parliamentary procedures (which can be protracted) would necessitate. The land in question is shown on Plan A in Appendix 3.
- 3.8. To compensate for the disposal of public open space land associated with paragraph 3.7 above which was previously acquired for highway improvement

purposes, which will be surplus to requirements for the road widening scheme is proposed to be appropriated from highway use to community use to regulate its designation. This appropriation requires an advertisement process under Section 122 (2A) of the Local Government Act 1972. Land to be appropriated is shown on Plan B in Appendix 4 annexed to this report.

New Line Retail Park

- 3.9. As part of the proposed Harrogate Road / New Line CPO the acquisition of one of the ground floor units of the New Line Retail Park (NLRP) has been identified as a method of providing replacement off-street parking for visitors to the centre. The Council's consultants have considered the prospect and implications of acquiring the land at either the side or frontage of the Nursery to provide approximately 3-4 car replacement parking spaces to serve the NLRP as a potential alternative to the proposed approach. Lengthy discussions spanning many months, coupled with significant time and effort, have been devoted to trying to acquire car spaces from the Nursery and its landowner by agreement. Unfortunately, neither the Nursery (the tenant) or its landlord are prepared to entertain any arrangement whereby any of the Nursery car parking spaces (either at the side or the front of the Nursery building) are sold or shared with the NLRP. Furthermore, the use of the Nursery's side parking spaces could have caused problems with occupiers of the rear industrial units, who have expressed concern about the number of additional car movements which may have been created and the possible encroachment on their own parking area. As a result of the consultant's negotiations it is clear that the Nursery is not prepared to countenance the loss of spaces not just to the side but to the frontage of the Nursery.
- 3.10. The option to include the acquisition of parking areas adjacent to the Nursery under the proposed Compulsory Purchase Order is specifically prohibited under CPO rules which do not permit the acquisition of land from one landowner to compensate another land owner, unless it can be shown to be in the greater public interest.

4. FINANCIAL & RESOURCE APPRAISAL

- 4.1. The funding for the Harrogate Road / New Line scheme is derived from two principle sources, (i) the West Yorkshire+ Transport Fund and (ii) private developer contributions via a Section 106 obligation on a 70%/30% split basis. Funding for the A650 Hard Ings Road project is solely derived from the grant funding from the West Yorkshire+ Transport Fund.
- 4.2. Through securing Gateway 1 approval in December 2014 funding of £198,000 was allocated to develop the detailed design and specification for the Harrogate Road / New Line scheme through to Gateway 2 whilst funding of £420,000 was allocated to the Hard Ings Road Improvement scheme for the same purpose. However, in light of the requirement for both projects to be subject of CPO processes further funding for development to Gateway 2 will be sought from the Combined Authority.
- 4.3. It is very difficult to estimate the costs associated with the CPO process due to

the number of third party variables over which the Council has no control. On the basis that there is likely to be a Public Inquiry, costs are likely to range for £80,000 to £160,000 for this aspect alone. This estimate of costs would cover surveyors, solicitors, barristers, land referencer's fees but does not cover any references to Lands Tribunal in respect of compensation. The lower cost estimate assumes that elements of the CPO process are undertaken in-house.

- 4.4. An Exceptions Report is currently being prepared for the West Yorkshire Combined Authority seeking additional funding to cover the cost associated with both the additional time taken on land negotiations as well as the potential CPO costs.
- 4.5. The staff resources and specialist technical services required to develop the scheme referred to in this report are funded through the scheme budget.

5. RISK MANAGEMENT AND GOVERNANCE ISSUES

- 5.1. Responsibility for the governance of this project rest with the West Yorkshire Combined Authority (WYCA) and is controlled under their Assurance Framework. A rigorous project management system is in place for all West Yorkshire+ Transport Fund projects based around the OGC PRINCE2 (Projects in Controlled Environments) and MSP (Managing Successful Programmes) methodologies. The scheme described in this report will be subject to these processes.
- 5.2. Both projects programmes key dates demonstrate that both schemes can be delivered by the 2019/2020 deadline. However, it also shows that there may be risks to the project associated with a CPO process becoming drawn out and extended. The additional delay and risk of this has been incorporated within the project's risk log and will be closely monitored throughout the processes associated with achieving Gateway 2 approval.

6. LEGAL APPRAISAL

- 6.1. The Council should use a specific power of compulsory purchase where available rather than a more general power. It is possible that the Council could use those powers contained in the Town & Country Planning Act 1990 in respect of the general economic wellbeing of the area but, as this is a highways issue, the Highways Act powers are appropriate.
- 6.2. It has been pointed out that the use of compulsory purchase powers should be considered as a matter of last resort and that a compelling case in the public interest must be made out. Members are advised that acquisition by negotiation should continue and that the making of a resolution, or indeed the CPO itself does not require that these be discontinued. Circular 06/2004 states:

“Before embarking on compulsory purchase and throughout the preparation and procedural stages, an acquiring authority should seek to acquire land by negotiation where practicable. The compulsory purchase of land is intended as a last resort in the event that attempts to acquire by agreement fail. Acquiring authorities should nevertheless consider at what point the land they are seeking

to acquire will be need and, as a contingency measure, should plan a compulsory purchase timetable at the same time as conducting negotiations. Given the time which needs to be allowed to complete the compulsory purchase process, it may be more often sensible for the acquiring authority to initiate the formal procedures in parallel with such negotiations”.

It is therefore legally correct (subject to other issues) to authorise a CPO while negotiations are proceeding.

7. OTHER IMPLICATIONS

7.1. EQUALITY & DIVERSITY

Due consideration has been given in writing this report to the Council’s duties under Section 149 of the Equalities Act 2011.

The introduction of pedestrian facilities at this junction will improve the accessibility of the local area and will particularly benefit disabled people.

7.2. SUSTAINABILITY IMPLICATIONS

The improvement of the Harrogate Road / New Line junction will support the future housing requirements for the District.

Improvements to the traffic flow on Harrogate Road will assist in reducing the level of harmful pollutant emissions from vehicles on this busy road and the A657 New Line. Similar benefits will apply to the Hard Ings Road Improvement scheme.

Introduction of dedicated cycle facilities throughout the junction will assist in encouraging greater use of cycling through on both the Harrogate Road and New Line corridors and Hard Ings Road.

7.3. HUMAN RIGHTS ACT

The Human Rights Act 1998 places direct obligations on public bodies such as the Council to demonstrated that the use of compulsory purchase powers is in the public interest and that the use of such powers is proportionate to the ends being pursued.

It is acknowledged that the compulsory acquisition of the Order Land could amount to an interference with the human rights of those with an interest in the Land. These rights include those under Article 1 of the First Protocol of the European Convention on Human Rights (“ECHR”)(which provides that every natural or legal person is entitled to peaceful enjoyment of his possessions) and Article 8 of the ECHR (which provides that everyone has the right to respect for his private and family life, his home and his correspondence).

In this instance the Council considers that there is a compelling case in the public interest for compulsory acquisition of the Order Land that should outweigh

such rights, and therefore the use of compulsory purchase powers in this matter is proportionate. Without the use of these powers it is possible that all of the land necessary to deliver the scheme may not be available within a reasonable timescale, which would compromise the delivery of the junction improvement and the extensive benefits for both travellers and the local community that the scheme provides.

7.4. TRADE UNION

There are no Trade Union implications arising from this report.

7.5. WARD IMPLICATIONS

The Harrogate Road / New Line scheme lies within the Idle & Thackley and Eccleshill wards. The Hard Ings Road Improvement lies within the Keighley Central ward. Members and the local community have been consulted on the current scheme proposals and will similarly continue to be consulted as the scheme reaches appropriate stages of development.

Where the council has been able to identify individual property owners it has made contact directly prior to the preparation of this report. Where the Council has currently been unable to identify property owners letter drops to individual properties have been made advising of the Council's intentions in relation to this scheme and seeking commencement of negotiations.

8. NOT FOR PUBLICATION DOCUMENTS

- 8.1. This report contains exempt information. Exempt information is included in Appendix 1 and 2 and is not for publication. The exempt information is under the following category (identified in amended schedule 12A of the Local Government Act 1972):

S(3) Information relating to the financial or business affairs or a particular person including the authority holding the information.

9. OPTIONS

- 9.1. There are a number of potential options available to Executive for each of the issues presented in this report, namely:

a) Approval or rejection of the modification of the CPO boundaries as shown in Appendices 1 and 2 of this report - Approval of the modifications would allow both schemes to progress to a slightly modified programme towards CPO and their ultimately delivery. Currently, both schemes are running two months behind their original programmes as a result of the necessity to amend their CPO details. Alternatively were Executive minded to refuse the modifications proposed such a decision would jeopardise the delivery viability of the schemes which ultimately could potentially see the scheme funding from WYCA being withdrawn.

b) Approval or rejection of the introduction of powers under Section 40 of the

Road Traffic Regulation Act 1984 - Approval of the use of these powers would allow delivery of mitigation proposals associated with off-street parking provision to be incorporated into the CPO. Such an approach would help mitigate the ultimate compensation payable by the Council to affected businesses in the area. Alternatively, were these powers not conferred further negotiation would be essential to try to mitigate the financial impacts to the scheme of not being able to address parking issues. Ultimately, it is unlikely that such negotiations would be able to provide equivalent mitigation to the replacement of off-street parking proposed.

- c) Delegation of determination of further modifications to the CPO details - Whilst the schemes are nearing a design freeze to allow deposit of the CPO with the Secretary of State it is possible that further minor amendments could be required to the CPO boundary details contained in this report. Were Executive minded to delegate consideration of such a modification to the Strategic Director and Portfolio Holder any such required amendments to the CPO boundary could be resolved with minimal further delay to the programme being incurred. However, were Executive not minded to delegate these matters then a further potential 2 – 3 month delay could be incurred to the overall project programme jeopardising the Council's ability to deliver a scheme by 2019/20 as required under the terms of the Growth Deal.

10. RECOMMENDATIONS

10.1. That the Executive resolve as follows:-

- a) That a Compulsory Purchase Order be made under Section 239, 240, 246, 250 and 260 of the Highways Act 1980, Section 40 of the Road Traffic Regulation Act 1984 and the Acquisition of Land Act 1981 to be known as the City of Bradford Metropolitan District Council (Harrogate Road / New Line Junction Improvement Scheme) Compulsory Purchase Order 2017 for the compulsory purchase of land and rights required for the construction of the Harrogate Road / New Line junction as shown on revised drawing no: R/PTH/MH/103196/CPO-6A (the 'Order Land') annexed to this report.
- b) That the boundary plan previously approved by Executive on the 12th January 2016 in relation to the City of Bradford Metropolitan District Council (A650 Hard Ings Road Improvement Scheme, Keighley) Compulsory Purchase Order 2017 for the compulsory purchase of land and rights required for the construction of the proposed Hard Ings Road highway improvement scheme be amended, as shown on the revised drawing no: PTH/HS/103197/CPO-01B (the 'Order Land') annexed to this report.
- c) That the previous CPO resolutions inconsistent herewith be and are hereby rescinded
- d) That the details of the above Compulsory Purchase Order resolutions be

placed on the Register of Local Land Charges.

- e) The Compulsory Purchase Orders be submitted to the Secretary of State for Transport for confirmation at the earliest possible opportunity.
 - f) That in the event of a further modification to the extent of the Order Land as a result of on-going negotiations the authorisation of any further amendments to the CPO boundary be delegated to the Strategic Director of Place in consultation with the Portfolio Holder, Regeneration, Planning & Transport in the interests of expediency.
- 10.2. That the Executive declares surplus to requirements for community use an area of land used for recreation comprising in the whole some 338 square metres (or thereabouts) of land shown edged red on Plan A annexed to this report and agrees, in principle, that the land may be used instead to facilitate a proposed highway widening scheme along Harrogate Road / New Line, Greengates, Bradford.
- 10.3. That the intention to provide replacement land comprising 1,249 square metres (or thereabouts) of land shown shaded green on Plan B annexed hereto for the highway widening scheme, be approved pursuant to Section 122(2A) of the Local Government Act 1972 in order to replace the public open space land needed for the road widening.
- 10.4. That consideration of any objections received to both published notices described in 10.2 and 10.3 above on whether the open space land should be permitted to be used for the road widening scheme and the replacement land appropriate from highway purposes to community use, be delegated for decision to the Executive Portfolio Holder for Regeneration, Planning and Transport and the Strategic Director: Corporate Services.

11. APPENDICES

- 11.1. Appendix 1 – Drawing No. R/PTH/MH/103196/CPO-6A, CPO Order Land for Harrogate Road / New Line Improvement Scheme
- 11.2. Appendix 2 – Drawing No. PTH/HS/103197/CPO-01B, CPO Order Land for the A650 Hard Ings Road Improvement Scheme, Keighley
- 11.3. Appendix 3 – Harrogate Road / New Line - Public Open Space (Plan A)
- 11.4. Appendix 4 – Harrogate Road / New Line - Public Open Space (Plan B)

12. BACKGROUND DOCUMENTS

- 12.1. Scheme Files – 102581 & 103196
- 12.2. West Yorkshire Combined Authority Gateway 1 submission – Harrogate Road / New Line Junction.
- 12.3. West Yorkshire Combined Authority Gateway 1 submission – Hard Ings Road Improvement.

- 12.4. Report to Executive 2 October 2012 - West Yorkshire+ Transport Fund
- 12.5. Report to Council 10 October 2012 – West Yorkshire+ Transport Fund
- 12.6. Report to Executive 5 March 2013 – West Yorkshire+ Transport Fund
- 12.7. Report to Council 18 March 2013 – West Yorkshire+ Transport Fund
- 12.8. Report to Executive 15 January 2015 – West Yorkshire+ Transport Fund, Harrogate Road / New Line junction.
- 12.9. Report to Executive 21 July 2015 – West Yorkshire+ Transport Fund, Hard Ings Road Improvement, Keighley.
- 12.10. Report to Executive 5 December 2015 – West Yorkshire+ Transport Fund - Harrogate Road / New Line Junction Improvement Update and Compulsory Purchase Order (Highways Act 1980).
- 12.11. Report to Executive 12 January 2016 – West Yorkshire+ Transport Fund – Hard Ings Road Improvement Update and Compulsory Purchase Order (Highways Act 1980).
- 12.12. Report to Executive 14 June 2016 – West Yorkshire+ Transport Fund – Compulsory Purchase Order and Side Road Order Powers under Highways Act 1980.