

Title of meeting: Cabinet

Date of meeting: 11th December 2017

Subject: City Centre Road update and 'In principle' Compulsory Purchase Order resolution

Report by: Tristan Samuels - Director of Regeneration

Wards affected: All

Key decision: Yes

Full Council decision: No

1. Purpose of report

- 1.1 This report sets out the important role the city centre plays in accommodating the growth needs of the city. Given the substantial quantum of development which is allocated in the city centre new and improved infrastructure provision is necessary, including the reconfiguration of the highway network to the north of the city centre.
- 1.2 This report provides an update as to the progress of the related infrastructure project (the City Centre Road) and seeks approval of a series of recommendations to progress delivery of the City Centre Road project.

2. Recommendations

The Cabinet is recommended to:

- 2.1 Approve the land assembly strategy for the City Centre Road project as attached at Appendix 1.
- 2.2 Give delegated authority to the Director of Regeneration on the advice of the City Solicitor in consultation with the Leader with Portfolio responsibility for Planning, Regeneration & Economic Development to negotiate and complete acquisitions of legal interests, on the basis of the statutory CPO Compensation Code, in land required for the delivery of the City Centre Road scheme.
- 2.3 Give delegated authority to the Director of Regeneration to procure and appoint specialist advisers for:
- Land referencing Agents
 - Specialist compulsory purchase surveyors

- 2.4 Approve the progress of all work necessary to establish a case for compulsory purchase of land required for the City Centre Road scheme.
- 2.5 Approve, in principle, the use of compulsory purchase powers for the acquisition of land to deliver the City Centre Road scheme (indicatively shown in red on the attached plan at Appendix 2) and note that the making of any compulsory purchase order will be subject to Members being satisfied in all respects that the criteria in paragraphs 3.19 have been met. Members are also asked to note that the redline area shown on the plan is currently widely drawn around the entire City Centre Road scheme application site area. It is not anticipated that all land/interests shown will need to be acquired to deliver the scheme however, a degree of flexibility prior to detailed technical approval of the scheme and its mitigation, is required at this stage. Officers will take all reasonable measures to minimise the need to acquire third party interests in accordance with CPO Guidance and the existing design approach to the scheme.
- 2.6 Note that Officers will need to seek a future resolution to grant the Director of Regeneration and the City Solicitor authority, in accordance with section 122 of the Local Government Act 1972, to declare that any land acquired or held and required for the delivery of the City Centre Road scheme may, where they conclude that it is no longer needed for its present purpose, appropriate the land for such statutory purpose as necessary to deliver the City Centre Road scheme, and to authorise the overriding of such easements, rights, or other adverse matters burdening the land, where that is needed to deliver the scheme, in reliance on section 203 of the Housing and Planning Act 2016.

3. Background

- 3.1. The Portsmouth Plan was adopted in January 2012 (the Local Plan). The aim of the Local Plan is to provide a positive planning framework for the successful regeneration the city. A main element of the development strategy of the Local Plan is to locate additional development at key development sites within the city centre, provide public transport hubs and routes to reduce reliance on the private car, and improve circulation, accessibility including pedestrian and cycle links and public realm. The level of growth achieved in the city will be dependant on the provision of new and improved infrastructure. A number of the main development sites in the city rely on a major amount of new transport infrastructure to provide access and create sustainable transport routes. Without this infrastructure these sites will only be able to accommodate lower levels of housing and the level of development for the city centre identified in the local plan.
- 3.2 The Local Plan identifies that the highway network in the city centre currently creates a very poor quality environment. It is not ideal for any road user, creates physical barriers which make it difficult to access several parts of the centre and, with the level of development anticipated along the western corridor, will lead to a great deal of congestion. The Local Plan policies support the reconfiguring of the highway network in the north of the city centre, to address these issues. The City Centre Road scheme

presents an ideal opportunity to improve the city centre for all road users, but particularly to increase public transport priority and create routes which will bring pedestrians, cyclists and bus passengers into the heart of the shopping area reducing congestion and addressing other issues such as air quality. The proposed City Centre Road would also improve the connectivity of the city centre, allowing easy access to the whole centre and thus opening up a number of sites for development. Finally, the City Centre Road scheme includes landscaping and design strategies which will create a high quality, pleasant and safe environment which in turn will increase its appeal to shoppers and investors and so increase the competitiveness of the city centre.

- 3.3 The Infrastructure Delivery Plan (IDP) sits alongside the Local Plan. In order to ensure that new development delivers sustainable communities, and properly plans for and helps informs the infrastructure priorities for the city.
- 3.4 On the 1 April 2012 the Council became a Community Infrastructure Levy (CIL) Charging Authority under the Community Infrastructure Levy Regulations 2010 (as amended). The Council published a list (1st April 2012) of the infrastructure that would be funded or part funded through the CIL contributions, (the Regulation 123 List). The City Centre Road is one of the projects identified on the Regulation 123 List.
- 3.5 At present there is a £15m allocation available in the current approved capital programme for the City Centre Road scheme.
- 3.6 The City Centre Road scheme provides dedicated bus lanes and routes that allow buses to pass through the city centre core, unimpeded by private vehicles and through traffic, therefore delivering public transport to the heart of the city, increasing the potential attraction of the services and potentially securing a more sustainable future for the city. The scheme will also promote the expansion of patronage of the Park and Ride, as the buses operating from the site will be able to take advantage of routes that deliver people closer to their likely final destinations within the city centre.
- 3.7 The City Centre Road scheme provides highway changes that will deliver the following:
 - 3.7.1 Fundamental re-design of the City's most strategic access route into the City Centre, to the Naval Dockyard and beyond, which will strengthen the network connectivity both North to the "City Deal" development sites at Tipner and Horsea Island, as well as South to Gunwharf Quays (retail and leisure centre), the Historic Dockyard and the Seafront .
 - 3.7.2 A proposed new road layout that stretches from the bottom of the M275 to Unicorn Gate serving the western corridor. It is where the majority of traffic enters the City in the morning peak carrying just under half (46%) of all inbound traffic
 - 3.7.3 The opportunity for significant improvements in connectivity between the northern and southern part of Commercial Road, significant public realm improvements and cycle routes.

- 3.8 The current Local Plan identifies the City centre accommodation major growth for the plan period up to 2027. Within the city centre the Plan identifies the area can deliver the following:
- 50,000m2 retail floorspace
 - 9,500m2 Food and Drink
 - 1,600 dwellings
 - Hotel development
 - 10,000m2 office
- 3.9 The current Local Plan is under review, the City Centre is seen as an area of opportunity for further development.
- 3.10 A planning application for the City Centre Road scheme was submitted on 1st December 2017

Land Assembly

- 3.11 Whilst progress with property/interest owners has been made in discussing acquisitions and dedications of land that will be necessary to deliver the City Centre Road scheme, land assembly remains a critical issue for the delivery of the scheme. Clearly the road cannot be delivered across land that is not in the ownership of the Council and without this, certainty cannot be gained to the likely programme of delivery of the road scheme or the wider regeneration aspirations for the area.
- 3.12 The Council has already identified the principle landowners across the area and has commenced discussions with them regarding the acquisition of land required for the City Centre Road scheme. The Council already owns significant land holdings that will be needed for the proposed route, and wherever possible the scheme uses land already held for highways purposes.
- 3.13 To deliver the road as a single project however all relevant land interests will need to be brought in, in a timely way, meaning that a construction programme could only progress with certainty at a rate dictated by the timing of the last acquisition. The consideration of the potential need to use powers of compulsory acquisition is therefore considered to be essential, to facilitate delivery of the scheme in line with the Council's intended programme.
- 3.14 Not all land and property interests that may be affected by the scheme are immediately identifiable, even with reference to information at the land registry. Officers are therefore proposing the appointment and use of land referencing services, through which it will establish a comprehensive log of all land and property interests - these will include all freeholds, leaseholds, tenancies, easements, rights, and any other legal interests that may need to be acquired for delivery of the City Centre Road scheme. The outcome of the land referencing exercise will show all the relevant parties that the Council will need to enter into negotiations for the acquisition of their interests. It will also identify where there is land in unknown ownership which can only be acquired through compulsory purchase.

- 3.15 Whilst it is anticipated that further progress can be made on the negotiated approach for some parcels of land and legal interests it is good practice and appropriate to consider the use of compulsory purchase powers.
- 3.16 The government recognises in its *"Guidance on Compulsory Purchase"* dated October 2015, (the **CPO Guidance**), that if acquiring authorities wait for negotiations to break down, this can have detrimental impacts on the timing of delivery of public projects. Therefore, depending on when the land is required, the guidance considers it sensible for an acquiring authority to:
- 3.16.1 plan a compulsory purchase as a contingency measure; and
- 3.16.2 initiate formal procedures.
- 3.17 Importantly, the CPO Guidance expressly recognises that such steps *"...help to make the seriousness of the authority's intentions clear from the outset, which in turn might encourage those whose land is affected to enter more readily into meaningful negotiations"*.
- 3.18 The CPO Guidance requires acquiring authorities to attempt to acquire land by agreement before embarking on the CPO process, although it is recognised that for schemes involving the acquisition of the number of interests, it is sensible to run the CPO process in parallel with ongoing negotiations.
- 3.19 This report seeks members support for a resolution 'in principle' for the use of compulsory purchase powers to assemble the City Centre Road scheme site, should all reasonable attempts to acquire the necessary land and interests fail. As the guidance makes clear, use of compulsory purchase powers is intended as a 'last resort'. Officers acknowledge that if any CPO was to be made, Members would require further updating and justification:
- that there was a compelling case in the public interest;
 - that there were no planning, funding or other legal impediments to the City Centre Road being delivered,
 - that all reasonable attempts to acquire all interests by agreement have not been successful;
 - for any interference with the human rights of those with an interest in the land affected; and
 - that any assessment of the impacts on residents, visitors and employees be measured and evaluated, with special focus on the likely effect of the proposals on those sharing protected characteristic (race, pregnancy, age, disability, gender reassignment, marriage/civil partnerships, religion/belief, sex, sexual orientation (as defined by the Equality Act 2010)) be made, in order for the Council to fully understand those impacts, and to consider measures to mitigate

impact, make reasonable adjustment, and foster good relations between those sharing protected characteristics, and those who do not.

- 3.20 The main benefit of the use of compulsory purchase is the certainty of being able to obtain vacant possession to a planned programme. This is absolutely vital in order give the Council confidence that the scheme will be delivered. The use of compulsory purchase also provides a level of certainty on project programming which in turn would allow the Council to enter into commercially sound construction contracts. This is because, once the CPO is confirmed and the legal challenge period has passed, the Order can be implemented and a date for vacant possession fixed in accordance with the project programme.
- 3.21 A Side Roads Order (SRO) is also likely to be required. A SRO gives powers to stop up, divert, provide as new or improve existing parts of the local highway network that crosses or enters the route of a proposed new classified road. They also provide powers to stop up and provide new means of private access to premises in relation to those new roads.
- 3.22 A resolution approving the 'in principle' use of compulsory purchase powers at this stage in the process, will demonstrate the Council's commitment to the timely delivery of the City Centre Road and its related benefits.
- 3.23 The Council has appointed Pinsent Masons, a leading law firm to advise on all legal aspects of the City Centre Road scheme and a land assembly strategy has been developed which includes advice on CPO. Legally privileged and confidential advice prepared by Pinsent Masons is attached to this report at appendix 3 (this is an exempt confidential appendix). Should the Council seek to progress a CPO/SRO, it will have regard to the advice set out in the CPO Guidance, DfT Circular 1/97 and the advice of its appointed legal advisors.
- 3.24 The key target dates for the City Centre Road scheme are:
- Planning application submission - 1st December 2017
 - In principle CPO/SRO decision - 11th December 2017
 - Target planning application determination - March 2018
 - Construction commences - 2019
- 3.25 Whilst the monies allocated in the Capital Programme do not cover the total cost of the road the Council are considering a range of different funding options. As already identified the road is one of the key infrastructure projects identified on the CIL 123 list and considerable monies have been collected though CIL charging to date. There are currently a series of funding bids which currently include a bid to the LEP, bids to the Housing and Infrastructure Fund (Marginal Viability and Forward Funding bids) the National Infrastructure and Productivity Fund and the Growth and Housing Fund. A series of other funding options are currently being explored

4. Reasons for recommendations

- 4.1 The main body of the report gives specific details to the background of the recommendations all of which are considered by officers as important to ensure the timely delivery of the City Centre Road scheme and its associated regeneration benefits.

5. Equality impact assessment

- 5.1 The Equality Act 2010 requires that that impact of the recommendation on residents, visitors and employees be measured and evaluated, with special focus on the likely effect of the proposals on those sharing protected characteristic (race, pregnancy, age, disability, gender reassignment, marriage/civil partnerships, religion/belief, sex, sexual orientation (as defined by the Equality Act 2010)) be made, in order for the Council to fully understand those impacts, and to consider measures to mitigate impact, make reasonable adjustment, and foster good relations between those sharing protected characteristics, and those who do not.
- 5.2 The Council's Equalities Officer has examined the recommendations undertaking an initial screening, concluding that at this stage there are unlikely to be equality, diversity/cohesion and integration impacts - that there is no need for a full assessment to take place, but that, in relation to any future decision to *make* a CPO a comprehensive review of the impact on human rights, and equalities will need to take place, with appropriate analysis, survey, and report prepared for the decision maker - including proposed adjustment and mitigation.

6. Legal comments

- 6.1 Section 120 of the Local Government Act 1972 authorised the Council to acquire by agreement any land for the benefit, improvement, or development of the Council's area or for purposes of any of the Council's functions under any enactment, notwithstanding that the land is not immediately required for such purposes.
- 6.2 Sections 239, and 240 of the Highways Act 1980 (the Act) are the principle powers covering the acquisition of land for the construction of new highways and the improvement of existing highways. Section 240(2) of the Act authorises the Council to acquire compulsorily or by agreement any land which is required for use by the Council in connection with the construction or improvement of highway. Section 246 authorises the acquisition of land in advance of requirement (the Council may not need to rely on this if no land is required in advance), section 249 relates to distances limits for land acquisition for various purposes, section 250 authorises the acquisition of new rights, and section 260 relates to the inclusion in a CPO of land acquired by agreement where it is necessary to override the effects of a restrictive covenant or other third party right. Sections 14 and 125 are the main relevant powers where a side roads order is required.
- 6.3 The precise suite of powers required will be settled upon once land requirements and other matters relating to the road are finally determined.

7. Director of Finance's comments

- 7.1 The total cost of enabling the new City Centre Road including any land acquisition costs for the Road (but excluding any land acquisition costs for the development parcels), all construction, fees and contingencies is estimated to be £70m. The Council has, thus far, committed £15m of its own funding towards this scheme.
- 7.2 The scheme and its enabling development are expected to deliver a significant transformational economic boost for the City. So long as the scheme can be demonstrated to be deliverable (e.g. in terms of planning, land assembly, procurement and cost), there is a good degree of confidence that the Council will be able to attract the funding shortfall in order to fulfil the scheme.
- 7.3 At present, the Council has made multiple bids to a number of Housing and Infrastructure related funds as follows:
- Housing Infrastructure Fund (DCLG / HCA) - Marginal Viability
 - Housing Infrastructure Fund (DCLG / HCA) - Forward Funding
 - National Productivity Investment Fund (DfT)
 - Growth and Housing Fund (Highways England)
- 7.4 Whilst there remains a degree of uncertainty regarding the overall funding of the scheme, it is important in terms of being able to demonstrate commitment and deliverability to Government / Local Enterprise Partnership (as funders). The proposals within this report relating to land acquisition are expected in the first instance, to be funded from within the Council's contribution to the scheme. Acquisitions will only be made with due regard to the following:
- There remains reasonable confidence that full funding for the scheme will be achievable
 - Overall value for money
 - Where acquisition is time critical for the delivery of the scheme, generally
 - Where acquisition is time critical and where not to acquire would compromise grant funding
- 7.5 Such an approach will ensure that only necessary costs are incurred prior to the scheme achieving full funding.

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Signed by:

Appendices:

Appendix 1 - Acquisition Strategy

Appendix 2 - Red line plan

Appendix 3 - Confidential advice note from Pinsent Masons (exempt for publication, s100A of the Local Government Act 1982 Schedule 12A, paragraph 3)

Background list of documents: Section 100D of the Local Government Act 1972

The following documents disclose facts or matters, which have been relied upon to a material extent by the author in preparing this report:

Title of document	Location

The recommendation(s) set out above were approved/ approved as amended/ deferred/ rejected by on

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Signed by:

