



Title of meeting: The Cabinet and the Full Council

Date of meeting: 3 October 2023 & 17 October 2023

Subject: Tipner West & Horsea Island East Regeneration – Preparatory steps for likely planning and consenting processes

Report by: Kerri Farnsworth, Director of Regeneration (interim)

Wards affected: All

Key decision: Yes

Full Council decision: No

1. Purpose of report

- 1.1 This report provides an update on the progress of the preparatory work necessary for the purposes of the Council, in its capacity as promoter of development, obtaining the relevant planning permission(s) and other consents likely to be required for the Tipner West and Horsea Island East Regeneration (**the Project**).
- 1.2 The report sets out a number of recommendations in terms of progressing the relevant planning and other consenting applications for the Project, including the preparation of the applications and ascertaining all relevant land and interests in land required to deliver the Project.

2. Recommendations

The Cabinet is recommended to:

- 2.1 note the update on the progress in respect of the Project of:
 - (i) work being undertaken by the Council (as promoter of the Project) for the purposes of obtaining the necessary planning permission(s) and other consents likely to be required, and
 - (ii) land assembly and land referencing;
- 2.2 on the basis of the Cabinet and Full Council resolutions contained within the contemporaneous report to the Cabinet and the Full Council titled "Tipner West & Horsea Island East Regeneration" for meetings on 08/10/2023 and 17/10/2023 respectively (the Contemporaneous Report), approve the taking by the Council (as

promoter of the Project) of all steps required to progress each aspect of the consenting strategy for the Project. This strategy is likely to require the Council (as promoter of the Project): (1) to make and thereafter promote an application for an order to be made under the Transport and Works Act 1992 (**the TWAO application**), which would include seeking inclusion in the TWA Order of compulsory acquisition powers where necessary, (2) to make and thereafter promote an application(s) for a Marine Licence(s), and (3) to make and thereafter promote an application(s) for a planning permission(s) under the Town and Country Planning Act 1990 (**the TCPA application**). This includes:

- (a) the preparation of all relevant documentation for the above applications and the service of all necessary pre-application statutory notices; and
- (b) seeking and obtaining information in respect of all relevant land and interests in land in relation to the applications referred to in this paragraph 2.2. The intention is to seek and obtain this information by making voluntary 'requests for information' and then, where appropriate, by issuing statutory requisitions for information in connection with interests in land under section 16 of the Local Government (Miscellaneous Provisions) Act 1976;

- 2.3 delegate authority to undertake all steps and actions referred to in paragraph 2.2 above to the Director of Regeneration;
- 2.4 delegate authority to the Director of Regeneration to negotiate and complete agreements for the acquisition of relevant land and interests in land for the delivery of the Project. These negotiations will be in accordance with the Compensation Code and advice will be sought from the City Solicitor, in consultation with the Leader;
- 2.5 delegate authority to the Director of Regeneration to confirm the instruction of / instruct land referencing agents to identify all the third-party land and land interests required to deliver the Project and inform discussions with landowners as a precursor to negotiations to acquire land / interests based on voluntary agreements;
- 2.6 note that Officers may need to seek a future resolution in respect of the Council seeking compulsory purchase powers in relation to the development to be authorised by the TCPA application (as the TWAO application will separately seek authorisation, where required, for compulsory purchase powers in relation to development it relates to) by the Council making a compulsory purchase order under section 226 of the Town and Country Planning Act 1990 (as well as, where necessary, under section 17 of the Housing Act 1985 and sections 239 and 240 of the Highways Act 1980) should the land referencing exercise identify third party land or rights that the Council is unable to purchase by agreement;
- 2.7 note that Officers may 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 Project scheme is, where they conclude that it is no longer needed for its present purpose, appropriated for such statutory purpose as necessary to deliver the Project, 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; and

- 2.8 note that prior to and after the making of the TWAO application, resolutions of the Full Council under s.239 of the Local Government Act 1972 will be required, following publication of the requisite public notices.

The Cabinet:

- 2.9 recommends to the Full Council to note the content of the report.

3. Background

- 3.1 In response to significant job losses at the Naval Base and the decision to cease naval ship building in the City, Portsmouth and Southampton City Councils signed a joint 'City Deal' with the UK Government in November 2013. The overarching aim of the City Deal was for Southampton and Portsmouth to maximise their economic strengths in the wider Solent area by supporting further growth in the area's maritime, marine and advanced manufacturing sectors, alongside the necessary infrastructure and housing to support that objective.
- 3.2 In Portsmouth, the key sites identified by City Deal were located at Tipner East and West and Horsea Island. The sites were to be unlocked by facilitating land assembly and providing funds to support enabling infrastructure, and by so doing lever in significant private sector investment. Underpinning City Deal was a grant of £48M to Portsmouth City Council to unlock the economic and social potential of Tipner East and West and Horsea Island in accordance with the terms of City Deal, alongside the Council's vision for the area.
- 3.3 As detailed within the Contemporaneous Report, the Council is carrying out detailed investigations into the Masterplan options to meet the terms of the City Deal and achieve its vision for the area. The Contemporaneous Report sets out a full background to the development of the Project and the need for clarification of the principles, as originally adopted by the Council in 2022, that set a strategic brief to the Project. The Contemporaneous Report also explains the need for a single overarching objective for the Project to ensure relevant assessments, including statutory assessments, are carried out robustly. Subject to the clarified principles having been approved, a significant amount of work will be required to advance the Project through further sifting of Masterplan options and to prepare the complex suite of documents to support the TWAO and TCPA applications, including an application for a Marine Licence(s), which are likely to be required for planning and consenting purposes.

- 3.4 Progress to date includes baseline surveys and research into housing and marine employment, which has informed an optioneering exercise which is underway. Inputs have also come from engagement with key stakeholders and conservation bodies, which have further informed the Masterplan optioneering process and the scope of ecological mitigation / compensation work required under The Conservation of Habitats and Species Regulations 2017. Identification of land for habitat compensation/mitigation is an integral part of the optioneering process and will necessitate discussions with landowners – in this context, land referencing work is necessary to ensure the Council can acquire all the relevant land and interests in land required to enable the delivery of the Project.
- 3.5 In parallel with the Masterplan optioneering work, the Council has been conducting early discussions with a number of third-parties whose land or interests in land may be required to deliver the Project. These discussions have been positive and are aimed at securing the relevant land and land interests through voluntary agreement. This work is being informed by the first stage of a Land Referencing exercise to identify all the land required for the Project, and a list of owners of relevant land and interest holders in land. Further landowner engagement will precede the second stage of the Land Referencing exercise involving the service of land requisition notices. The work remains focused on securing all land interests on a voluntary basis via private treaty / agreement, with the Council only intending on seeking relevant compulsory acquisition powers where that has not been possible. Indeed, there must be ‘compelling case in the public interest’ for the Council to be able to be given compulsory acquisition powers and compulsory acquisition is a ‘last resort’. If exercising such powers in due course in connection with the Project, the Council will comply with all relevant legislative and guidance compulsory acquisition requirements.
- 3.6 The Land Referencing work is critical to identifying all the third-party land and land interests required to deliver the Project and inform discussions with landowners as a precursor to negotiations to acquire the relevant land and interests, preferably on a voluntary basis.
- 3.7 The Council (as promoter of the Project) has appointed specialist land referencing agents, who have already undertaken preliminary desktop exercises and plan to informally liaise with relevant landowners and persons with an interest in land relevant to the Project.
- 3.8 The primary source of land referencing data is the Land Registry. However, not all interests are registerable. Referencing data is pulled together from multiple sources, some publicly available some collected by direct contact with interested parties. Usually, land referencing occurs early in the project development process to understand the scale and issues with land acquisition and thereby inform a strategy for acquiring land by agreement. It is likely to be necessary to update or re-fresh the land referencing at a later stage to ensure the information is accurate when implementing the relevant permission(s), powers and consents.

- 3.9 The Council and its advisers are seeking to obtain necessary information in relation to all land interests and rights through voluntary 'requests for information'. The expectation is that as a result the vast majority of land interests will be identified. However, there is no obligation on a recipient to respond to these voluntary requests. Consequently, it may be that the Council (as promoter of the Project) is unable to ascertain all relevant land interests through this method.
- 3.10 For that reason, it may be necessary to issue statutory requisitions to prove that diligent inquiry has been made. These requisitions compel recipients to provide full and accurate details of the information sought. It is an offence to fail to respond to a requisition and the Council (as promoter of the Project) only intends to issue them where it is necessary to do so. The legal basis for issuing statutory requisitions in this context is section 16 of the Local Government (Miscellaneous Provisions) Act 1976.
- 3.11 Delegations to the Director of Regeneration are sought (1) undertake all steps and actions referred to in paragraph 2.2, (2) to negotiate and complete agreements for the acquisition of relevant land and interests in land for the delivery of the Project, and (3) to confirm the instruction of / instruct land referencing agents to identify all the third- party land and land interests required to deliver the Project and inform discussions with landowners as a precursor to negotiations to acquire land / interests based on voluntary agreements.
- 3.12 The Council is making preparatory steps to submit the TWAO application in relation to the Project works, the need for which is explained in the legal comments section below. Within the Project Programme appended to the Contemporaneous Report, it is proposed that the TWAO application will be submitted to the Secretary of State for Transport in summer 2024 and that the TCPA application will be submitted at the same time or shortly afterwards.

4. Reasons for recommendations

- 4.1 This report seeks the Cabinet's approval for the advancement of all necessary preparatory steps to make the TWAO application, a marine licence(s) application and the TCPA application in relation to the Project. This includes the preparation of all relevant documentation for the applications and service of any pre-application statutory notices. It also relates to determining all relevant landowners and land interests and, where necessary, negotiating with landowners with a view to completing legal agreements where necessary.
- 4.2 The planning and consenting process is a complex and lengthy process, and the listed preparatory steps need to commence early to ensure the Project Programme for the Project (appended to the Contemporaneous Report) is met and there are no delays to the Project which would be costly (as set out in the Contemporaneous Report).

5. Integrated impact assessment

- 5.1 As part of the Masterplanning and public consultation work, a full integrated impact assessment will be undertaken in respect of the Project.

6. Legal implications

- 6.1 Expert legal advice has been sought from a reputable law firm in relation to the planning and consenting routes required for the Project. Whilst a consenting strategy for the Project cannot be finalised until a preferred Masterplan option has been identified, a Transport and Works Act Order ("the TWAO") has been identified as the most appropriate consenting mechanism.
- 6.2 Works which—
- i. interfere with rights of navigation in waters within or adjacent to England and Wales, up to the seaward limits of the territorial sea, and
 - ii. are of a description prescribed by order made by the Secretary of State, may be authorised by a TWAO under the Transport Act 1994.
- 6.3 The TWAO application would be accompanied by an application for a planning direction under Section 90(2A) of the Town and Country Planning Act 1990 to give deemed planning permission for the development authorised by the TWAO.
- 6.3 In addition to the TWAO application, other consents will be required, including a marine licence(s) from the Marine Management Organisation which may be required to authorise construction, alteration or improvement, dredging and deposits in the sea relating to the Projects.
- 6.4 The TWAO application process is very likely to include a public inquiry. Therefore, preparatory steps described in this report towards this application need to start early to be completed in time for the application to be submitted in accordance with the Programme appended to the Contemporaneous Report.
- 6.5 A separate planning application(s) to the local planning authority will also be necessary to authorise the development of other components of the Project which may include marine employment buildings and structures and any housing provision. Those components are not covered by the TWAO application and permission must be sought under the Town and Country Planning Act 1990.
- 6.6 As noted in the recommendations section, a separate prior authority from the Full Council will be required in relation to promotion of the TWAO application, pursuant to s.20 (Power to apply for, or object to, orders) of the Transport and Works Act 1992, s.239 (Power to promote or oppose local or personal Bills) of the Local Government Act 1972, and the Council's Constitution (Part 1, Chapter 4).
- 6.7 Section 239(1) of the Local Government Act 1972 (**the LGA 1972**) gives any local authority in England, including the Council as promoter of the Project, the power

to promote 'any local or personal Bill in Parliament', which includes a TWAO. There is a specific procedure that the Council must follow as part of the process leading to a resolution by the Full Council to promote the TWAO, as provided for in section 239(2) of the LGA 1972. This procedure is a two-stage process:

- (i) A resolution must be passed by a majority of the whole of the members of the Council at a meeting. The meeting must be held after notice of the meeting and its purpose has been advertised in one or more local newspapers in the local authority's area, which is in addition to the ordinary notice required for the convening of a meeting of the local authority. There must be 30 clear days' (at least) between the additional notice and the meeting itself (section 239(3) of the LGA 1972). It is intended that this resolution will be put before Full Council in July 2024.
- (ii) The resolution under paragraph (i) above must be confirmed by the majority of the whole of the members of the local authority by a second resolution at a further meeting. The same arrangements for the meeting referred to in the paragraph above must be followed for the meeting to confirm the resolution in terms of the ordinary notice, the additional notice and notice period between the additional notice and the further meeting. The meeting to confirm the resolution must be held as soon as practicable after the expiration of fourteen days from the date that the TWAO application was submitted. The confirmation of this resolution will be put before Full Council after the application has been submitted but before any public inquiry on the TWAO application starts.

6.8 Section 16 of the Local Government (Miscellaneous Provisions) Act 1976 relates to the exercise of a local authority's functions, irrespective of whether the authority is seeking to acquire land compulsorily. This power can be used to require information in the context of a proposed TWAO application on the basis that the promotion of the TWAO is for the purposes of economic development and housing, which are functions of the Council. (Under section 239 of the Local Government Act 1972, a local authority may promote or oppose any local or personal Bill in Parliament. By virtue of section 20 of the Transport and Works Act 1992, any body that has the power to promote or oppose Bills in Parliament has the power to apply for (or object to) a TWAO but subject to the same conditions.) In the context of the TCPA application, the Council may rely on section 16 of the Local Government (Miscellaneous Provisions) Act 1976 for the purposes of carrying out its function of economic development and provision of housing.

6.9 The resolutions sought in this report at paragraphs 2.2 to 2.5 fall within the remit of a 'key decision' as defined in the Council's Constitution and are therefore reserved to the Cabinet. The Cabinet may refer the report to the Full Council for noting.



7. Director of Finance's comments

- 7.1 The Tipner West & Horsea Island East Regeneration Cabinet report of 08/09/22 recommended that a further £7.7m was spent to progress design works for the purposes of obtaining the necessary planning applications under the Town and Country Planning Act ('TCPA') and the Transport Works Act 1992 ('TWA'), including an estimate for external legal fees (this assumed a planning submission in Feb 2024). This report was approved by Cabinet and subsequently by Full Council on 13/09/22. This was funded from the City Deal Grant.
- 7.2 Whilst the financial implications of the recommendations contained within this report to progress each aspect of the consenting strategy for the Project cannot be fully determined until a preferred Masterplan option has been identified, a Transport and Works Act Order ("the TWAO") has been identified as the most appropriate consenting mechanism. An estimate for expert legal advice related to the consenting strategy and subsequent support during the TWAO, Marine License(s) and planning permission(s) processes formed part of the £7.7m estimate.
- 7.3 Due to the time taken to fully consult with the LPA and Regulatory Panel the current estimated timeframe for the submission of the planning application is Summer 2024. This is approximately six months later than was reported in the 08/09/22 Cabinet Report, and as a result of this there are likely to be additional costs over and above the approved £7.7m. At present the expenditure to date can be contained within the approved amount, however, if the additional costs cannot be mitigated a request for further funding will need to be made to Cabinet to be funded from the City Deal grant.

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Signed by:

Appendices:

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
Contemporaneous Report to the Cabinet and the Full Council titled: "Tipner West & Horsea Island East Regeneration".	Published with the Agenda for the Cabinet meeting on 08/10/2023 and the Full Council meeting on 17/10/2023.



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

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Signed by: