

CABINET – 24 MARCH 2020

**NORTH AND EAST MELTON MOWBRAY DISTRIBUTOR ROAD –
MAKING OF THE COMPULSORY PURCHASE ORDER AND SIDE
ROADS ORDER FOR LAND REQUIRED**

REPORT OF THE DIRECTOR OF ENVIRONMENT AND TRANSPORT

PART A

Purpose of the Report

1. The purpose of this report is to seek the Cabinet's approval to secure the compulsory acquisition of land and rights shown in pink and blue on the order map at Appendix A ("CPO Maps") and the associated Side Roads Order at Appendix B (SRO Maps) for the North and East Melton Mowbray Distributor Road ("NEMMDR") scheme. The report also provides an update on the costs and delivery timescales for the scheme.

Recommendation

2. It is recommended that:-
 - (a) A Compulsory Purchase Order to be known as "The Leicestershire County Council (North and East Melton Mowbray Distributor Road) Compulsory Purchase Order 2020" (CPO) be made under Sections 239, 240, 246, 250 and 260 of the Highways Act 1980 and the Acquisition of Land Act 1981 to secure the compulsory acquisition of the land shown coloured pink and the new rights over the land shown coloured blue on the CPO Maps (Appendix A);
 - (b) A Side Roads Order to be known as "The Leicestershire County Council (North and East Melton Mowbray Distributor Road) (Side Roads) Order 2020" (SRO) be made under Sections 14 and 125 of the Highways Act 1980 to construct new highways and public rights of ways, stop up, divert, improve or otherwise deal with a highway including public rights of ways and the closure and creation of private means of access as shown in the SRO maps at Appendix B;
 - (c) The Director of Environment and Transport and Director of Corporate Resources be authorised, in consultation with the Director of Law and Governance and following consultation with the relevant Cabinet Lead Members, to:
 - i. finalise and make, if necessary, any minor or technical amendments, modifications and deletions to the Order Map and SRO Plan should this be considered appropriate;

- ii. finalise the CPO and the SRO (collectively referred to as “the Orders”) and the Statement of Reasons;
 - iii. in accordance with the Cabinet authority dated 6 July 2018 continue to take all necessary steps to make, publish, obtain confirmation of the Orders including (but not limited to) the publication and service of all statutory notices and presentation of the Council’s case at any Public Inquiry or through written representations, to secure the confirmation of the Orders (with or without modifications) by the Secretary of State for Transport and implement the Orders associated with the North and East Melton Mowbray Distributor Road scheme;
- (d) That the latest position with regard to costs and timescales for the scheme, set out in Part B of this report, be noted.

Reason for Recommendation

3. The Cabinet (in July 2018) authorised the Director of Environment and Transport to, among other things, take the necessary steps to make, secure confirmation of and implement the Orders necessary for the scheme. At that point in the scheme’s development it was not known exactly which areas of land these orders would pertain to although a preferred route had been identified. The planning permission granted in March 2019 was based upon the corridor of land required for the NEMMDR scheme whilst detailed design work for the scheme continued. The final plans for land take for the NEMMDR Scheme have only recently been finalised and in the interests of clarity for affected land owners and to assist the Inspector should unresolved objections to the County Council’s acquisition require a public inquiry, now that the areas of land required for the scheme are known Cabinet should formally note and approve the requirements subject to minor amendments.
4. Authorising the Director of Environment and Transport and the Director of Corporate Resources to proceed with the making, securing confirmation and implementation of the Orders will help ensure this is done within the planned timescale. The land areas represented in both the CPO and SRO plans, for example, may require minor modifications following responses received to the notices served under Section 5A Acquisition of Land Act 1981 seeking information as to ownership of land and rights.
5. To advise members of the latest position since progress with the scheme was reported to the Cabinet in July 2019.

Timetable for Decisions (including Scrutiny)

6. The Order Map and SRO Plan will be reviewed following receipt of the necessary responses received from landowners to the Section 5A notices and it is expected that these will be finalised (Subject to confirmation of the orders) and the Orders will be made in April 2020.

7. Advanced investigations and works are scheduled from May 2020, with mobilisation of the main contract works in May 2021. Construction would start on-site from August 2021, with completion in summer/autumn 2023.

Policy Framework and Previous Decisions

8. The Cabinet has made a number of decisions in recent years in connection with a transport strategy for Melton Mowbray and the development of a distributor road. This included approving the necessary consultation to identify a preferred route, in May 2017, and in December 2017 a decision to prioritise the north and east sections and carry out further work to progress this including (in light of a very tight timescale) to authorise the Chief Executive to submit the Outline Business Case to the Department for Transport.
9. The Director agreed the Preferred Route in May 2018 and in July 2018, following the announcement of the successful funding bid, the Cabinet inter alia authorised the submission of a planning application and the making of the necessary CPO and SRO.
10. Planning permission for the NEMMDR was granted on 23 March 2019. In June 2019 the Cabinet approved delivery of the scheme. In November 2019 the Cabinet received a report on various matters relating to the MMDR and agreed that the Director of Environment and Transport could take the necessary action to deliver the NEMMDR.
11. As detailed in the previous reports, the development of the MMDR is consistent with a number of the Council's plans and policies, the third Leicestershire Local Transport Plan (LTP3) and the Council's Enabling Growth Action Plan.
12. A separate report with regard to the financial risk sharing agreement with Melton Borough Council is to be presented to Cabinet on 24 March. This report does not conflict with and should not impact on decisions regarding this matter.

Resource Implications

13. There are no new resource implications arising from the recommendations in this report.
14. Funding for the NEMMDR has been the subject of previous reports and is currently estimated to be around £65.2m plus a contingency. £49.5m will come from the Large Local Majors Fund, subject to approval of the Full Business Case.
15. The estimated construction cost has reduced slightly from that indicated in the Outline Business Case but the overall cost has increased because of additional preparatory work and site investigations. Detailed design work is expected to be completed shortly and will give more certainty to the construction costs.

16. In broad terms, the financial exposure for the County Council is currently in the region of £15.7m, excluding the contingency. It is expected that this will eventually be recouped through developer (Section 106) contributions.
17. The Director of Corporate Resources and the Director of Law and Governance have been consulted on this report. Further detail about CPO and SRO along with the latest position with regard to costs and timescales for the scheme is given in Part B of this report.

Circulation under the Local Issues Alert Procedure

This report has been circulated to Members representing the electoral divisions in the Melton area: Mr. J. T. Orson CC, Mr A. E. Pearson CC, Mrs P. Posnett MBE CC, and Mr J. B. Rhodes CC.

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PART B

Background

18. As indicated in Part A of this report, above, the Cabinet has received a number of reports at key stages in the development of the NEMMDR.

Compulsory Purchase Order

19. The CPO is based on the Scheme design that gained planning permission in March 2019. The purpose of the CPO is to ensure that the County Council has all the land it requires and has acquired all the interests (rights) necessary to guarantee that the scheme can be constructed and maintained. Descriptions of the rights, included in the CPO Schedule, will enable:
- short-term access, for the construction of any element of the highway scheme where the scheme footprint is insufficient,
 - access to sites for landscaping purposes,
 - access to site and working area for diverting a watercourse and filling in the existing stream bed,
 - installation of tree protection and other temporary environmental measures such as the protection of ecologically important sites during construction,
 - access for the construction of environmental mitigation measures such as the River Eye diversion area and flood compensation areas,
 - access to areas necessary as part of the diversion of Rights of Way.
20. Throughout the scheme's development the County Council has been in contact with landowners likely to be affected by its need to acquire additional land. The details of parties with interests in land affected have been obtained through land registry titles where available and where land is not registered information has been sought through discussion with local landowners and/or by placing notices on site.
21. Wherever possible, it is intended that the acquisition of land and rights will be conducted by negotiation and agreement with landowners - negating the need for CPO if possible - and this dialogue will continue beyond the making of the Orders. However, it is likely that the Compulsory Purchase process will be vital to acquire land for the scheme delivery.
22. Following discussion with landowners and tenants and having assessed potential impacts, minor modifications have been made to the scheme's design, the extent of land acquisition plots, and areas where interests or rights are required. This has been particularly important in relation to providing private means of access to land.
23. The CPO plans at Appendix A show the extent of land and rights required for the scheme. The land acquisition areas are coloured pink, whilst land where interests are required is coloured blue. The total area where both land acquisition and interests are required is approximately 137 hectares.

24. A small proportion of the acquired land may be offered back to landowners on completion of the scheme. This land will be identified within the Statement of Reasons submitted with the CPO.

Side Roads Order

25. The SRO will enable the County Council to construct new highways and public rights of ways, stop up, divert improve or otherwise deal with a highway and public rights of way and the closure and creation of private means of access and this will allow the County Council to carry out works to existing highways, private means of access and rights of way which would otherwise affect the route of the NEMMDR. The plans are attached at Appendix B.
26. The SRO will enable construction and operation of the scheme by dealing with all necessary access points, rights of way and highways that interact with NEMMDR, including consideration of all private means of access.

Legal Comments

27. The CPO and SRO have been prepared in consultation with the Council's Property Services, Legal Services, and the barrister who will appear on the County Council's behalf at any required public inquiry. Considerable effort has gone into the production of the plans to ensure that, whilst the Council will have all the land it needs, it does not acquire land and interests unnecessarily (agreement is sought for the Director of Environment and Transport to make minor modifications to the plans if need be).
28. The process for CPO and SRO comprises the drafting and making of the Orders setting out compulsory purchase requirements and impacts on Side Roads (existing highways and other rights of way), followed by an objection period, possible public inquiry, and inspector's report and recommendations. Timing for this is included in the NEMMDR programme.
29. The County Council is seeking to mitigate the potential for a public inquiry through continued discussions with landowners around impact minimisation and potential compensation packages; if a public inquiry is not required, construction could begin earlier.
30. As indicated previously, the Cabinet (in July 2018) authorised the Director of Environment and Transport to take the necessary steps to implement the CPO and SRO necessary for the scheme. At that time, in the early stages of the scheme's development, these areas of land and rights had not actually been identified. The Council has been taking external legal advice on a number of aspects of the NEMMDR scheme, arising from which it was recommended that the Cabinet should be advised of the location of the land and rights to be the subject of CPO and SRO and thus reduce the risk of any subsequent challenge to its decision to acquire the land and rights compulsorily.
31. If no objections are received or any objections received have not been withdrawn, then the Orders will be submitted to the Secretary of State for

Transport for confirmation. In the event that there are unresolved objections then the Secretary of State may arrange for a public inquiry to be held or alternatively, the objections may be considered through the written representation procedure, although this is subject to agreement from the objectors.

32. Following the public inquiry or the written representations procedure, the Secretary of State has the option to confirm the Orders, not confirm the Orders or confirm them subject to modifications.
33. If the Orders are confirmed, with or without modification, then the County Council would only seek to implement the orders in accordance with the statutory process and acquire the land and rights, either compulsorily or by agreement, when it has obtained approval of the Full Business Case for the Large Local Majors Fund has been obtained. Construction cannot commence until the County Council has acquired all the land and rights required for the scheme.

Scheme Cost

34. The estimated construction cost has reduced slightly although the overall cost has increased due to an additional preparatory work and site investigations.
35. In December 2017 the total cost for the NEMMDR was estimated at £74m. This was prior to submission of the Outline Business Case BC and included a £5.2m contingency that reflected the level of assumptions being made at this relatively early design stage.
36. The Outline Business Case estimated costs to be £63.5m, including development, construction and land cost including a risk sum (for the purpose of the funding bid no contingency was allowed), and in July 2018 the Cabinet noted that as a result of the £49.5m funding award from the DfT Large Local Majors Fund, the County Council's financial commitment was in the region of £14m plus a contingency.
37. As design work progressed, the Cabinet noted (June 2019) approximately £500,000 of additional project risk relating to the complexity of design issues around flooding, structures, and statutory stakeholder requirements.
38. In November 2019 a full review of preparation costs was undertaken. The estimated cost to take the scheme through design and advanced investigation work is forecast to be £6.4m. Of the £6.4m, £400,000 is the cost of identified risks during design; this sum may not be required if these risks do not materialise. the work would mitigate construction risk and give greater certainty over costs during the construction phase. Savings of £2m - through avoiding works to overhead powerlines - were identified. A review of costs carried out as part of Early Contractor Involvement gave an estimated construction cost of £51m excluding contingency.
39. At present the current total cost estimate for the NEMMDR is approximately £70.3m including a 10% contingency, around £1.7m more than the estimate in

the Outline Business Case. Thus, in broad terms, the financial exposure for the Council is in the region of £15.7m excluding contingency. It is expected that this will be recouped in later years through developer contributions; to date secured contributions are in the region of £7m.

40. The detailed design is programmed due to be completed this month at which point there will be a full construction cost review by the contractor. The scheme will undergo a rigorous value engineering process throughout the remaining pre-construction period to assess the potential opportunities for savings.

Timetable

41. It is expected that the Orders - the CPO and SRO - will be made by the end of April. Following this there will be a Statutory Orders Objection period, which will include any required Public Inquiry being concluded and a decision being made by Spring 2021.
42. Alongside this and subject to the above and other issues, the County Council will be seeking to have the Full Business Case agreed by the DfT in spring 2021 (meaning that the Local Majors Funding will then be released). Land acquisition would follow, with construction beginning in the summer of 2021, finishing in the autumn 2023.

Equality and Human Rights Implications

43. There are no equality and human rights implications arising directly from recommendations in the report. A full Equality and Human Rights Impact Assessment formed part of the planning application submission which can be viewed online. This includes full details of assessed impacts and proposed mitigation where applicable.

Background Papers

12 December 2017 – Cabinet Report – ‘Melton Mowbray Distributor Road Proposals’: bit.ly/2GMnOTB

6 July 2018 – Cabinet Report – ‘North and East Sections of the Melton Mowbray Distributor Road Proposal’: bit.ly/2Lia7RF

25 June 2019 – Cabinet Report– ‘North and East Melton Mowbray Distributor Road – Outcome of Planning Application’:
<http://politics.leics.gov.uk/ieListDocuments.aspx?CId=135&MId=5604&Ver=4>

22 November 2019 – Cabinet Report – ‘Melton Mowbray Local Plan Delivery Partnership - HIF Bid Update’:
<http://politics.leics.gov.uk/ieListDocuments.aspx?CId=135&MId=5608&Ver=4>

Appendices

Appendix A – Compulsory Purchase Order Maps

Appendix B – Side Roads Order Maps

Appendix C – NEMMDR General Arrangement Plan

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