

ABERDEEN CITY COUNCIL

COMMITTEE	Urgent Business Committee
DATE	6 May 2020
EXEMPT	No
CONFIDENTIAL	No
REPORT TITLE	South College Street Junction Improvements (Phase 1) – Compulsory Purchase Order
REPORT NUMBER	RES/20/090
DIRECTOR	Steven Whyte
CHIEF OFFICER	John Wilson
REPORT AUTHOR	Alan McKay
TERMS OF REFERENCE	UBC 1

1. PURPOSE OF REPORT

- 1.1 This report requests that Committee approve the recommendation to make the Compulsory Purchase Order (CPO) to facilitate the construction of the South College Street Junction Improvements Project (Phase 1).

2. RECOMMENDATION(S)

That the Committee:-

- 2.1 resolves to make a Compulsory Purchase Order in respect of the land identified in the CPO Map (comprising 3 sheets) contained in Appendix 1 and instructs the Chief Officer - Governance to implement the statutory procedures following on from the making of the Order.

3. BACKGROUND

- 3.1 It is important to acknowledge that the design development and construction of capital projects has been impacted by the COVID-19 pandemic.
- 3.2 In lieu of the impact the Scottish Government advised local authorities (contracting authorities) to immediately:
- **“Urgently review their contract portfolio and inform suppliers who they believe are at risk that they will continue to be paid as normal (even**

if service delivery is disrupted or temporarily suspended) until at least the end of June. Contracting authorities can define 'at risk' according to need.

- **Put in place the most appropriate payment measures to support supplier cash flow**; this might include a range of approaches such as forward ordering, **payment in advance/prepayment**, interim payments and payment on order (not receipt).
 - If the contract involves **payment by results** then payment should be **on the basis of previous invoices**, for example the average monthly payment over the previous three months.
 - **To qualify, suppliers should agree to act on an open book basis** and make cost data available to the contracting authority during this period. **They should continue to pay employees and flow down funding to their subcontractors.**
 - Ensure **invoices submitted by suppliers are paid immediately on receipt** (reconciliation can take place in slower time) in order to maintain cash flow in the supply chain and protect jobs.”
- 3.3 Further, we have received correspondence from the Minister for Local Government, Housing and Planning providing further guidance and indicating the “fall off of in projects progressing in the pre-procurement stage”. To address this issue we are progressing this/these projects by way of this report to support the construction industry during this period.
- 3.4 The City Centre Masterplan Station Gateway intervention area requires the removal of cars on Guild Street and sections of Carmelite Street creating the opportunity to expand pedestrian footways and Union Square as a pedestrian friendly space and form a seamless pedestrian route through the Merchant Quarter. This removal of traffic will facilitate a high quality public realm scheme on Guild Street with quality materials that can create comfortable places for people to linger and enjoy.
- 3.5 Following the adoption of the City Centre Masterplan (the CCMP) the impact of the proposed changes on the city’s road network have been assessed. This work identified the South College Street Junction Improvements (Phase 1) project (the Project) as an enabling measure, highlighting that its associated capacity improvements to aid the flow of traffic are essential prior to implementation of the east-west routes interventions namely Guild St (EN02) & Union St (EN05) identified in the CCMP. Both interventions support the delivery of the CCMP public realm and streetscape outcomes to improve public spaces, providing improved links between Masterplan projects and city centre assets. Delivery of the CCMP as a whole will bring substantial economic benefits to the region, while interventions EN02 and EN05 have the potential to improve investor perception & confidence, increase footfall, visitor numbers and spend. Further work has confirmed that the previously approved project (Option 1) should be developed as a first phase solution with a second phase to follow. Phase 1 of the project involves the creation of:

- an additional traffic lane along South College Street between Bank Street and Wellington Place;
- an additional lane on Palmerston Place;
- a new traffic signal controlled junction at Palmerston Place/North Esplanade West;
- new and altered walking and cycling infrastructure; and
- the alteration of the existing traffic signal controlled junctions at South College Street/Wellington Place and South College Street/Millburn Street/Palmerston Place to provide additional capacity.

3.6 At its meeting of 26 September 2019 (report number: RES/19/271) the City Growth and Resources Committee considered the Project's revised business case and resolved to:

- (i) to note the contents of the revised business case for the Project;
- (ii) to agree the recommendations within the revised business case for the Project appended to the report;
- (iii) to instruct the Chief Officer - Capital to progress all necessary approvals, permissions, licenses, agreements and consents required to develop and implement the Project;
- (iv) to delegate authority to the Chief Officer - Capital, following consultation with the Chief Officer - Finance, to vire funds between transportation project budgets in the General Fund Capital Programme to a level required to ensure the Project can proceed to implementation; and
- (v) to delegate authority to the Chief Officer - Capital, following consultation with the Chief Officer - Commercial and Procurement Services, to consider and approve business cases (including estimated expenditures) for the Project for the purposes of Procurement Regulation 4.1.1.2 and 4.1.1.4; thereafter to procure appropriate works and services, and enter into any contracts necessary for the delivery of the project.

Land acquisition

3.7 Officers continue to progress the detailed design of the Project and have further defined the land required to construct the Project. The land to be acquired has been minimised as far as possible.

- 3.8 Since the last report to Committee work has continued to secure all land required for the implementation of the Project. Control and rights are confirmed over 5 areas of land.
- 3.9 Two further plots of land in third party ownership are still to be acquired. The Council needs to control these plots to progress the Project but due to lack of constructive engagement from the current owners it is unlikely that voluntary acquisition will be possible through agreement. As a result, compulsory acquisition of these plots is considered reasonable and proportionate to ensure that they can be acquired outright and within an appropriate timescale.
- 3.10 In 3 further instances the compulsory purchase process is intended to be used for the extinguishment of third party rights, or the creation of new temporary rights, required for the Project over areas of land currently owned by the Council and third parties. This will ensure that there are no gaps between this land and the adjoining plots and that there is sufficient working space to undertake project works. Accordingly, it is proposed that this land (or rights in land) will also be included in the CPO.
- 3.11 The 5 plots of land are shown coloured pink (2 plots), blue (2 plots) and green (1 plot) on the CPO Map (comprising 3 sheets) in Appendix 1. The plots do not include any residential or commercial buildings.
- 3.12 Officers will continue to seek voluntary acquisition alongside the CPO process in line with Scottish Government guidance. However, considering the above and given the importance of the Project as a dependency of the CCMP Phase 2; to ensure programme slippage does not detrimentally impact on the timescales for delivery of these major infrastructure investments, it is now appropriate to commence the compulsory purchase process through the making of a CPO to acquire control over all of the necessary land that is unlikely to be secured by agreement. Additionally, progressing the CPO now should allow timing of the Project works to proceed in line with expectations, limiting the level of overlap with major works associated with the Berryden Corridor Improvement project.
- 3.13 Given the compelling reasons for progressing the Project it is considered on balance that the public interest outweighs that of the individuals or businesses affected. It is acknowledged that affected parties will be deprived of their land or rights in land however they will be compensated in line with the statutory framework and appropriate accommodation works will be offered where possible.
- 3.14 Prior to the CPO being made, fresh title searches will be carried out and other enquiries made so that the schedules are up to date with the most accurate information that is available at that time. Based on current records, it is estimated that there are approximately 6 individuals and companies that will require to be notified.

Preparation of the CPO

- 3.15 Work to prepare the CPO has been undertaken with input from in-house Estates and Legal teams supported by external resources.
- 3.16 Design work undertaken by in-house resources supported by external resource has progressed on the Project this year. It is anticipated that the Project will proceed under the Council's permitted development rights as Roads Authority.
- 3.17 A junction and corridor option assessment has been undertaken and identified Option 1 as the preferred option. Following approval of the updated business case, officers have progressed the detailed design of Option 1 upon which the current proposals are based.
- 3.18 It is anticipated that the detailed design of the Project will evolve over the coming months, however, the final Project works will be accommodated within the land that is currently under Aberdeen City Council ownership / control as well as that acquired as part of the CPO.

Process & Timescales

- 3.19 If Committee approves the recommendations contained in this report, the CPO will be promoted in accordance with the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 by the Council as the Roads Authority to compulsorily acquire land and rights in land for the purpose of carrying out construction and improvement of a public road. It is considered that the powers under the Roads (Scotland) Act 1984 (sections 103, 104, 106 & 110) are the relevant powers to use to secure the necessary rights for the Project. There are no other more specific or appropriate powers which ought to be used. The CPO will be made, advertised and served on all relevant parties. It is proposed that service of the CPO will likely be carried out by the end of Spring 2020.
- 3.20 Following notice being served, the CPO will be sent to Scottish Ministers for confirmation. The process allows for objections to be made to the CPO and the objection period must be a minimum of 21 days. Any objections are required to be sent to the Scottish Ministers in writing. Should Scottish Ministers receive objections they will contact the Council to ask if the objection can be resolved and subsequently withdrawn.
- 3.21 Should objections from owners, tenants or occupiers be maintained the Scottish Ministers will arrange for a Public Local Inquiry (PLI) to be held. If a PLI were to be held, Scottish Ministers will appoint an Independent Reporter who will consider the case being made by the Council and any objectors. On completion of the PLI the Reporter will submit a report to Scottish Ministers making a recommendation on whether or not the CPO should be confirmed. Scottish Ministers will then consider the report and make a final decision on whether or not to confirm the CPO.

- 3.22 There are no set time scales for these processes but they typically take between 12-18 months from the making of a CPO to decision by the Scottish Ministers.
- 3.23 If the CPO is confirmed and following any vesting of land acquired there are likely to be claims arising from landowners and other affected parties based on the land compensation legislation which may take several years after completion of the Project to settle. The claims may be referred to the Lands Tribunal for determination if a negotiated settlement is not possible.
- 3.24 The durations indicated represent statutory requirements and typical processing timeframes. Social distancing restrictions and associated measures related to the COVID-19 pandemic may adversely impact the durations quoted. Should such measures remain in place at the point of service of the CPO, it is proposed that an extended period of time beyond statutory minimum be allowed for objections to be received. Given the uncertainty over the duration and nature of COVID-19 restrictions it is not possible to provide a firmer indication of likely overall timescales at this time.

4. FINANCIAL IMPLICATIONS

- 4.1 The financial implications are as previously reported to City Growth and Resources Committee (RES/19/271) on 26 September 2019.
- 4.2 It was considered unlikely that a CPO would be required to secure the land for the Project at the time of preparing the updated business case. Should progression of a CPO to inquiry become necessary, the business case will be refreshed with the additional costings, and any virement of budgets required to progress this will be made in line with the delegations to officers outlined in section 3.3 above.
- 4.3 The financial implications will continue to be managed through the preparation of a more detailed budget estimates as the detailed design progresses.

5. LEGAL IMPLICATIONS

- 5.1 An outline of the CPO process and timescales is contained within sections 3.19-3.24 above.

6. MANAGEMENT OF RISK

Category	Risk	Low (L) Medium (M) High (H)	Mitigation
Strategic Risk	Until land required for the Project is secured it cannot proceed to construction. The	H	The making of a CPO will provide greater certainty that required land will be acquired outright and within

	Project is key a dependency of phase 2 of the CCMP and aspects of the Sustainable Urban Mobility Plan. Any delay to the Project will impact on these wider programmes.		an appropriate timescale.
Compliance	The CPO may not be confirmed if a suitably robust case is not made.	L	This will be mitigated by the preparation of reports and supporting documents that will inform the process.
Operational	<p>There is a risk of objections from customers and citizens particularly from those directly affected by the Project and/or the compulsory purchase process.</p> <p>There is a risk associated with not providing an improved transport network which does not reflect the needs of the economy and society.</p> <p>The need for and duration of a PLI is a matter for Scottish Ministers and their appointed Reporter in accordance with statute. This will depend upon whether or not objections from landowners or other affected land interests are raised during the CPO process.</p>	<p>H</p> <p>H</p> <p>H</p>	<p>This will be mitigated by continued dialogue with those affected by the proposals. Compensation will also be payable under the statutory rules to affected landowners and other property interests.</p> <p>This will be mitigated by progressing the Project.</p> <p>This will be mitigated by continued dialogue with those affected by the proposals. However, it may not be possible to satisfy all objections to the proposals.</p>

Financial	The costs associated with the CPO process may have a potential impact on the budget.	M	The potential impact will be managed through the ongoing assessment of risks and cost monitoring.
	The Council is not in control of the requirement for a PLI, the timing or the length of time the CPO process may take.	M	The potential impact will be managed through the ongoing assessment of risks, objector management and programme monitoring.
	The compensation values as agreed or determined by the Lands Tribunal in due course may exceed the estimate and that of the budget set aside for the acquisition.	L	Given the nature of the plots included within the CPO the level of variance is likely to be low and will be managed through ongoing cost monitoring.
Reputational	There is a risk that Aberdeen City Council will experience reputational damage from supporters of the Project and the CCMP if it does not proceed.	H	This will be mitigated by progressing the Project.
	There is a risk that Aberdeen City Council will experience reputational damage from objectors to the Project if it proceeds.	M	This will be mitigated by trying to address issues raised by objectors but this may not be achievable in all instances.
Environment / Climate	It is likely that the proposals will lead to some detrimental impacts in the locality of the corridor while providing the opportunity for improvement along	L	Impacts are likely to be acceptable against the relevant standards and commensurate wider area improvements.

	other routes.		
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7. OUTCOMES

<u>COUNCIL DELIVERY PLAN</u>			
			Impact of Report
Aberdeen City Council Policy Statement			
Economy 3. Increase city centre footfall through delivery of the City Centre Masterplan,...			<p>The proposals within this report form a key enabler for phase 2 of the CCMP. Principally the project will enable the removal of cars on Guild Street and sections of Carmelite Street creating the opportunity to expand pedestrian footways and Union Square as a pedestrian friendly space and form a seamless pedestrian route through the Merchant Quarter (CCMP IA5). The Project's associated capacity improvements are essential prior to implementation of the east-west routes interventions namely Guild St (EN02) & Union St (EN05).</p>
Aberdeen Outcome Plan	City Improvement Plan	Local	
Prosperous Outcomes	Place	Stretch	<p>The project is a stated Commissioning Intention in support of LOIP Stretch Outcome 14, Key Driver 14.1 - Reducing emissions across the city.</p> <p>The proposals within this report support the delivery of LOIP Stretch Outcome 15 – 38% of people walking and 5% of people cycling as main mode of travel by 2026; through enabling the Key Improvement Measures in the City Centre.</p> <p>Principally the project will enable the removal of cars on Guild Street and sections of Carmelite Street creating the opportunity to expand pedestrian footways and Union Square as a pedestrian friendly space and form a seamless pedestrian route through the Merchant Quarter (CCMP IA5). The Project will also provide additional pedestrian and cycling facilities along the project roads.</p>

<p style="text-align: center;">Regional and City Strategies</p> <p>The Local Transport Strategy and City Centre Masterplan form parts of the Council Delivery Plan Strategy Framework.</p>	<p>The proposals within this report form a key enabler for phase 2 of the CCMP and directly contribute to meeting the LTS's objective to Implement a Programme of Road Improvement Schemes, building on the opening of the Third Don crossing, the Airport Link Road and ongoing work for the Berryden Corridor Improvement project.</p>
<p style="text-align: center;">UK and Scottish Legislative and Policy Programmes</p> <p>N/A</p>	<p>N/A</p>

8. IMPACT ASSESSMENTS

Assessment	Outcome
Impact Assessment	EHRIA required
Data Protection Impact Assessment	Not required

9. BACKGROUND PAPERS

RES/19/271 - City Growth and Resources Committee - South College Street Junction Improvements Business Case Update – 26th September 2019

Compulsory purchase in Scotland; A guide for property owners and occupiers
<https://www.gov.scot/publications/compulsory-purchase-scotland-guide-property-owners-occupiers/>

10. APPENDICES

Appendix 1 – CPO Map (comprising 3 sheets)

11. REPORT AUTHOR CONTACT DETAILS

Name	Alan McKay
Title	Roads Projects Team Leader
Email Address	alanmckay@aberdeencity.gov.uk
Tel	01224 523484

Appendix 1

RES/20/090

CPO Map