

ABERDEEN CITY COUNCIL

COMMITTEE	Council
DATE	11 December 2017
REPORT TITLE	Berryden Corridor Improvement – Compulsory Purchase Order
REPORT NUMBER	CHI/17/037
DIRECTOR	Bernadette Marjoram
REPORT AUTHOR	Mike Matheson

1. PURPOSE OF REPORT:-

- 1.1 This report requests that Council approve the recommendation to make the Compulsory Purchase Order (CPO) to facilitate the construction of the Berryden Corridor Improvement and seeks authorisation to apply for the necessary consents to deliver the Project.

2. RECOMMENDATION(S)

- 2.1 It is recommended that Council:
- a) resolves to make a Compulsory Purchase Order and instructs the Head of Legal and Democratic Services to implement the statutory procedures following on from the making of the Order; and
 - b) instructs the Head of Planning and Sustainable Development to apply for all necessary consents to progress the Project.

3. BACKGROUND/MAIN ISSUES

- 3.1 The Berryden corridor has been identified as a route that is operating beyond its capacity leading to significant congestion and journey time delays. The Project seeks to improve upon this as well as improve existing pedestrian and cycling facilities. In addition, the Project is also intended to provide additional capacity to support the delivery of the City Centre Masterplan and other city centre transport initiatives.
- 3.2 At its meeting of 14 December 2016 (ref CHI/16/240) Council resolved to:

- approve progression of the Project;
- instruct officers to prepare a CPO to acquire the necessary land that cannot be secured by voluntary acquisition;
- instruct officers to report to a future meeting of Council to seek a resolution to make the CPO; and
- instruct officers, in tandem with the CPO preparation, to continue to attempt voluntary acquisition using delegated authority as granted by Council on 17 August 2016.

3.3 Land acquisition

- 3.3.1 Officers have progressed the design of the Project and have further defined the land required to construct the transport corridor improvement and any proposed mitigation measures.
- 3.4 Over the past year the Council has acquired several of the individual residential properties that will be significantly impacted by the Project.
- 3.5 However a number of the required plots of land are jointly owned by multiple parties. The Council needs to control these plots to progress the Project but due to the number of owners it is unlikely that full voluntary acquisition will be possible through agreement. As a result, compulsory acquisition of these plots is the only option to ensure that they can be acquired outright and within an appropriate timescale.
- 3.6 In addition to these multiple ownership plots, numerous other plots are unlikely to be acquired by agreement in an appropriate timescale based upon contact made to date, and the number of plots involved. In other instances the compulsory purchase process will allow the extinguishment of rights, or the creation of new rights required for the Project.
- 3.7 Officers will continue to seek voluntary acquisition alongside the CPO process as it is more desirable to acquire land by agreement where possible. However, considering the above and given the importance of the Berryden corridor as part of the city centre infrastructure, 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.
- 3.8 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 900 individuals and companies that will require to be notified.
- 3.9 Of that number:
- 2 individual residential properties (one flat and one house, both on Caroline Place) will be affected by the CPO and negotiations are ongoing for the voluntary acquisition of those properties;

- approximately 90-100 contacts relate to land adjacent businesses / commercial properties; and
 - approximately 800 contacts relate to individuals holding common property interests in shared land adjacent to various residences along the corridor.
- 3.10 It should be noted that over 80% of the interests in land relate to common ownership rather than relating to individual ownership interests.
- 3.11 Preparation of the CPO**
- 3.11.1 Work to prepare the CPO has been undertaken with input from in-house Estates and Legal teams supported by external resources.
- 3.12 Design work undertaken by in-house resources supported by external resource has continued on the corridor and while it is anticipated that there will be further minor changes as the detailed design and consent applications progress any such changes are not likely to increase the required land take.
- 3.13 The results of an environmental option appraisal were considered as part of the study undertaken in 2009 and the subsequent report to the Enterprise Planning and Infrastructure Committee (ref EPI/09/110) on 26 November 2009. After considering the report, Committee instructed officers to progress the detailed design upon which the current proposals are based.
- 3.14 It has been recognised that there is a need to update the core information due to the passage of time. As a result consultants have been appointed to undertake updated air quality and noise assessments. These assessments will be more fully scrutinised as part of the planning application process. However, the preliminary updated results indicate that the impacts will be acceptable, consistent with previous conclusions.
- 3.15 Given the physical constraints of the corridor together with the preliminary findings of the air quality and noise assessments it is proposed that all practical physical mitigation measures will be incorporated into the land that is either already available or proposed to be acquired as part of the CPO.
- 3.16 It is anticipated that the detail of the Project may evolve as part of the planning application process and the finished Project 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.

3.17 Planning Application

- 3.17.1 Dialogue has been undertaken with the Planning Authority as part of the pre-application process.
- 3.18 Statutory consents such as planning, listed building and conservation area consent have yet to be secured. However applications are planned to be submitted Spring 2018. The Public Local Inquiry (PLI) Reporter / Scottish Ministers may take this into consideration regarding whether or not to confirm

the CPO. It is therefore advisable to progress the planning application and other consents concurrently with the CPO process.

3.19 An Environmental Impact Assessment (EIA) Screening has been carried out. It was identified that while environmental impact assessment was not necessary, a number of issues will likely be considered by the Planning Authority when reviewing the planning application including noise, air quality, drainage, transport and archaeological assessments, bat surveys, heritage statement, and site investigation reports. The cost associated with this is covered within the Project's allocated budget.

3.20 As the Project is supported by national and local planning and transport policy, officers consider that prospects of obtaining the necessary consents are favourable.

3.21 **Timescales**

3.21.1 If Council approves the recommendations contained in this report, 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 Spring 2018.

3.22 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.

3.23 Should objections from landowners, tenants or occupiers be sustained the Scottish Ministers must arrange for a 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.

3.24 There are no set time scales for these processes but they typically take between 12-24 months from the making of a CPO to decision by the Scottish Ministers.

4. **FINANCIAL IMPLICATIONS**

4.1 The financial implications are as reported to Council on 14 December 2016 (CHI/16/240).

4.2 The financial implications will be managed through the preparation of a more detailed budget estimate as the detailed design progresses along with ongoing cost monitoring thereafter.

5. LEGAL IMPLICATIONS

- 5.1 The relevant legislation for making the CPO for the purposes of the construction of a road Project is as follows:
1. Sections 103, 104 and 110 of the Roads (Scotland) Act 1984; and
 2. Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947.
- 5.2 There are likely to be claims arising from the Project from landowners and other affected parties based on the Land Compensation (Scotland) Acts 1963 and 1973 which may take several years after completion of the Project to settle.

6. MANAGEMENT OF RISK

6.1 Financial

- 6.1.1 The costs associated with the CPO process may have a potential impact on the budget. The potential impact will be managed through the preparation of a detailed budget estimate along with assessment of risks and ongoing cost monitoring. Aberdeen City Council is not in control of the requirement for a PLI, the timing or the length of time the CPO process may take. As a result, there will be a medium residual risk which will be managed through ongoing cost monitoring.
- 6.2 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. At this stage it is difficult to predict to a high degree of accuracy the future market value of the properties that will be required for the Project. As a result, there will be a medium residual risk which will be managed through ongoing cost monitoring.

6.3 Employee

- 6.3.1 There are no risks identified directly affecting employees.

6.4. Customer / Citizen

- 6.4.1 There is a risk of objections from customers and citizens particularly from those directly affected by the Project and/or the compulsory purchase process. 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. However, it may not be possible to satisfy all objections to the proposals and as a result, there will be a high residual risk.
- 6.5 There is a risk associated with not providing an improved transport network which does not reflect the needs of the economy and society. This will be

mitigated by progressing the Project. As a result, there will be a low residual risk.

6.6 Environmental

- 6.6.1 It is likely that the proposals will lead to some detrimental impacts in the locality of the corridor. These include noise, air quality, ecology, heritage and the impact upon the built environment. These are matters that will be considered as part of the planning application process. Following discussions with the Planning Authority and considering the preliminary updated findings of the noise and air quality assessments officers consider that the impacts are likely to be judged acceptable against the relevant standards. As a result, there will be a medium residual risk.

6.7 Technological

- 6.7.1 There is an opportunity to incorporate variable message traffic signs and traffic monitoring equipment within the corridor to help monitor and influence traffic movement along the corridor and over the wider area. As there is a lead in time between specifying such technology and the corridor becoming fully operational there is a risk that emerging technology may be more fit for purpose than that specified in the contract. This can be mitigated by allowing a sum in the contract for providing necessary apparatus to be specified at the time of installation. As a result, there will be a low residual risk.

6.8 Legal

- 6.8.1 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. 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 and as a result, there will be a high residual risk.
- 6.9 The CPO may not be confirmed if a suitably robust case is not made. This will be mitigated by the preparation of reports and supporting documents that will inform the process. As a result, there will be a low residual risk.
- 6.10 Statutory consents such as planning approval have yet to be secured, but the necessary applications are proposed to be submitted for determination by Spring 2018. The PLI Reporter / Scottish Ministers may take this into consideration on whether or not to confirm the CPO. However, as the Project is supported by national and local planning and transport policy, officers consider that prospects of obtaining the necessary consents are favourable. As a result, there will be a medium residual risk.

- 6.11 There is Crown land to be acquired for the purposes of the Project. Under section 146 of the Roads (Scotland) Act 1984 Crown land is exempt from compulsory purchase, except where such land is included in a CPO by agreement with the relevant Crown entity. Accordingly the Project may require to be modified if the relevant Crown land is not secured by agreement. This can be mitigated by continuing the discussions with the affected parties (NHS and Police Scotland) with a view to securing the land voluntarily. Ongoing discussions indicate that the prospects of securing the land by agreement are good. As a result, there will be a low residual risk.

6.12 Reputational

- 6.12.1 There is a risk that Aberdeen City Council will experience reputational damage from supporters of the Project if it does not proceed. This will be mitigated by progressing the Project. As a result, there will be a low residual risk.
- 6.13 There is a risk that Aberdeen City Council will experience reputational damage from objectors to the Project if it proceeds. This will be mitigated by trying to address issues raised by objectors but this may not be achievable in all instances. As a result, there will be a medium residual risk.

7. IMPACT SECTION

- 7.1 This section demonstrates how the proposals within this report impact on the strategic themes of Aberdeen City Council and Community Planning Aberdeen, as set out in the Aberdeen City Local Outcome Improvement Plan 2016-26 and the Aberdeen City Council Strategic Business Plan.
- 7.2 Compulsory purchase is only justified where there is a compelling case in the public interest, and where the impact on affected individuals is considered reasonable and proportionate. This involves a balancing of the public interest in the Project against those private interests.
- 7.3 As is often the case with significant infrastructure improvement in the built environment, there are positive and negative impacts associated with the delivery of the Project.
- 7.4 The corridor improvement will bring with it some localised negative impacts such as reduced air quality, increased noise and impacts upon the built and natural environment. These negative impacts need to be weighed against the positive impacts the Project will deliver such as improved movement of goods and people and improved walking and cycling facilities. The Project also contributes to wider network changes that seek to make the city centre a more attractive place for retail, recreation and business.
- 7.5 Overall it is considered that there is a compelling case in the public interest for the Project and the CPO which will enable it to happen. The compulsory

purchase is considered to be necessary; reasonable and proportionate in the circumstances.

- 7.6 Any impacts should be considered fully as part of the planning application process. However, there are no known negative issues that are considered to be insurmountable such that the Project should not progress.

7.7 Economy

- 7.7.1 The Local Outcome Improvement Plan (LOIP) affirms the Council's position to encourage a prosperous economy through the primary driver of 'Investment in Infrastructure':

"We are committed to investing in an infrastructure that caters for the needs of a high performing international city economy – roads with capacity to cope with the demands of business, extensive air and sea links, digital connectivity to develop competitive business, and a competitive and accessible public transport system".

- 7.8 The Council aims to support improvement in the local economy to ensure a high quality of life for all people in Aberdeen, and the relevant Regional Economic Strategy embraces this in the vision through the 'development of infrastructure for commuter, visitor and freight transportation – nationally and internationally'. As the Project has been developed to support the Local Transport Strategy (LTS), it will also aid economic development. The LTS recognises the increasing role that transport contributes, both positively and negatively, to the health agenda. Taking this into consideration the current vision for the Aberdeen LTS is:

"to develop a sustainable transport system that is fit for the 21st Century, accessible to all, supports a vibrant economy, facilitates healthy living and minimises the impact on our environment".

- 7.9 Using standard calculation methodologies based upon the current estimate and projected traffic movements, the Project is forecast to produce a positive cost to benefit ratio. This means that the Project is predicted to represent a beneficial investment for the city.

7.10 People

- 7.10.1 The content of this report relates to the general travelling public and how they move around the city, and also the local communities who are directly affected by the Project. This report will be of interest to residents/ proprietors/ businesses within Aberdeen City.

- 7.11 The report has the following links to the Local Outcome Improvement Plan.
- We will develop infrastructure for commuter, visitor and freight transportation
 - We will promote health and wellbeing in all policies by Community Planning Partners to maximise contribution toward prevention of ill health and reduction in health inequalities.

- 7.12 The use of compulsory purchase will have an impact upon individuals and its use is justified only where there is a compelling case in the public interest, as is considered to be the case here.

7.13 Place

- 7.13.1 The report links with the theme Prosperous Places, which includes the priority empowered, resilient and sustainable communities and both primary drivers of safe and resilient communities, and people friendly city.
- 7.14 It is intended that the Project will improve the existing carriageway alignment and network capacity whilst also improving the walking and cycling facilities. These improvements should make the corridor more attractive to non-motorised users aiding in the promotion of more sustainable travel options.
- 7.15 Sustainable urban drainage systems, including detention basins, are proposed to improve the quality of surface water runoff.
- 7.16 The proposals will have a direct impact on the built environment but this is often unavoidable in the case of significant urban infrastructure improvement.
- 7.17 Due to the nature of the Project, it is inevitable that existing 'greenspace' in the locale will be affected. Much of this greenspace land has historically been reserved for the corridor improvement and every effort will be made to provide additional suitable landscaping where feasible.

7.18 Technology

- 7.18.1 The use of the CPO has no direct implications for the advancement of technology.

8. BACKGROUND PAPERS

CHI/16/240 - Council - Berryden Corridor Improvements Scheme, Compulsory Purchase Order – 14 December 2016

CHI/16/100 – Council – Berryden Corridor Improvements – 11 May 2016

EPI/09/110 – Enterprise Planning and Infrastructure Committee – Berryden Corridor Transport Infrastructure Improvements – 26 November 2009

Compulsory purchase and compensation; A guide for owners, tenants and occupiers in Scotland <http://www.gov.scot/Resource/Doc/360922/0122046.pdf>

9. APPENDICES

Appendix 1 – CPO Plan

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Appendix 1

CHI/17/037

CPO Plan