

Report of the Director of Economy and Place  
Portfolio of the Executive Member for Transport

**York Outer Ring Road Phase 1 Dualling – Resolution in principle to promote a Compulsory Purchase Order and associated Side Roads Order.**

**Summary**

1. In June 2020, Executive approval was given to progress with the procurement and consultation elements of the proposed York Outer Ring Road Phase 1 dualling and junction upgrade scheme (**‘the Scheme’**). This work has been largely completed and this is good news as the Scheme moves into the next phase in 2021. The primary objectives for the coming year are to submit a planning application and acquire land for the proposed scheme, see Annex A.
2. A consultation process with residents and stakeholders held last autumn is currently being evaluated. Over 3,500 comments were received about the proposals. Some of the emerging themes include 79% support (agree/strongly agree) for the scheme proposals but there were also concerns about inadequate facilities at some locations for pedestrians and cyclists. Consequently a separate report will be brought before members in due course to determine the outcome of that process, but in the meantime a resolution is needed to approve the ‘in principle’ preparation of a Compulsory Purchase Order (**‘CPO’**) and associated Side Roads Order (**‘SRO’**). This is necessary to enable the Council to make the necessary preparations in the event that negotiations for land purchase fail.
3. The land acquisition strategy for the Scheme is to purchase as much land as possible by private agreement and avoid or reduce the size of a CPO. The vast majority of land required is strips of agricultural land, there are no individual dwellings needed. The land acquired will be used for the new road, drainage and the orbital pedestrian/cycle route.

4. Acquisition of land is one of the key risks on the Scheme and as such it is important to acquire as much of the required land at an early stage to avoid future delays and increases in costs. A land agent has recently been appointed and discussions to purchase land are now expected imminently.
5. If the discussions to agree acquisition/licences of land are unsuccessful, it is vital to have completed the necessary preparations in readiness to make a CPO. This also serves to demonstrate to land owners that the Council is committed to acquiring the land and proceeding with the Scheme.
6. Preparation and making of a CPO can be a long drawn out process, possibly involving a Public Inquiry, so it is vital to make provisions at an early stage. This work will run in parallel with discussions with land owners who will be given the opportunity to sell land by private agreement without the need for a CPO.
7. This report is therefore asking Executive Members to approve the principle of pursuing a Compulsory Purchase Order and a Side Roads Order (relating to the improvement of highways, the stopping up of highways, the construction of new highways , the stopping up of private means of access to premises and the provision of new means of access to premises in association with the proposals in the CPO) using CPO powers contained in Part XII of the Highways Act 1980 to acquire the land required for the Scheme, and sections 14 and 125 of the Highways Act 1980 in relation to the Side Roads Order. A separate report requesting the endorsement of the making of the CPO and SRO will be brought to Executive in due course. Officers would endeavour to continue negotiations with landowners during the CPO and SRO process.
8. The next steps for the project team will be to contact landowners about the Scheme. They will also be addressing the response to the consultation process which took place in late 2020. This will be undertaken over the next three months and is aimed at addressing the impact of the comments on the design, active travel and planting proposals.

## Recommendations

9. The Executive are requested to:

- 1) Note the general progress on the YORR Phase 1 Dualling Scheme.
- 2) Approve the principle of pursuing a CPO using powers contained in Part XII of the Highways Act 1980 to acquire the land required to deliver the YORR Phase 1 Dualling Scheme (A19 Rawcliffe to A1036 Little Hopgrove).

Reason: The Executive are recommended to approve the principle of using CPO powers and officers will continue to prepare the documentation necessary to make the Order. In the meantime negotiations to acquire land will continue but in the event that these do not prove successful officers intend to take a report to a future Executive meeting requesting authority to make the Order.

- 3) Approve the principle of pursuing a Side Roads Order under Sections 14 and 125 of the Highways Act 1980 to carry out works to the highway in association with the proposals for the CPO.
- 4) Delegate authority to the Assistant Director of Transport, Highways and Environment to take all necessary steps to prepare to make the CPO referred to above. This delegation will also include negotiation of easements and temporary rights where freehold ownership is not required e.g. for drainage purposes, or temporary occupation for the construction works. This delegation will also include obtaining the release/extinguishment of, or variation of, any third party rights over affected land (for example a third party might have a right of way over land which needs to be acquired).

Reason: To ensure that the Council is in a position to make the Order as soon as practicable in the event that a final resolution to make the Order is made.

## Background

10. The YORR Improvement programme comprises two main elements which have now become a single scheme of delivery. Members will recall that in 2016, a scheme to upgrade seven junctions between Wetherby Road and Monks Cross secured funding through the West

Yorkshire Plus Transport Fund administered by West Yorkshire Combined Authority.

11. Subsequently in late 2019, the Department for Transport (DfT) gave endorsement to a Major Roads Network grant for dualling a 7.5km length of the A1237 between A19 Rawcliffe and A1036 Little Hopgrove. This element has now been merged with the junction upgrades, driven by planning legal reasons, and this was approved by Members at the Executive Meeting in February 2020.
12. Members are reminded that a similar report to this one (requesting resolution to prepare a CPO) was submitted and approved by the Executive for a proposed CPO at the Monks Cross junction in September 2019. That report was specifically targeted at acquiring land around the Monks Cross junction at a time before the dualling grant had been announced.
13. The subsequent work to understand the impact of the dualling grant meant that planning approval had to be secured for the whole of the 7.5km dualling length (including Monks Cross) so the previously proposed CPO was no longer appropriate. This report concerns a single CPO (including Monks Cross) for the 7.5km length from A19 Rawcliffe to A1036 Little Hopgrove to ensure that it will be possible to implement the Scheme.

### ***Progress since the last Executive Report June 2020***

14. In June 2020, Executive gave approval for the following areas of work:
  - The procurement strategy.
  - The consultation strategy.
  - Development of landscape principles.
15. Since June the project team have made good progress on all these items. Commissions for ground investigation, detailed design, land referencing, land agent and planning consultant have all been tendered and let. The consultation process took place during September, October and November of 2020. Finally, the landscape strategy document was produced to guide the design principles of the scheme.
16. The project team are now in a position to pursue progress on the next key goals for 2021. These are:

- To submit a planning application and secure planning approval for the Scheme.
- To acquire as much of the required land by private agreement as possible.
- To develop the detailed design and business case for the Scheme.

### ***Public Engagement***

17. As stated in paragraph 9 above, the project team developed a consultation process which complied with UK Government's guidelines to cope with the effects of the Covid-19 virus. This took place last autumn 2020 using a combination of telephone conferences, letter drops, media channels, internet and face to face meetings. It appears to be successful having attracted over 3,500 comments and these are now being evaluated.
18. A separate report about the consultation will be brought to the Executive in coming months specifically to address the outcome of this process. The report will cover the concerns raised by the respondents and the suggested modifications to the scheme as presented at consultation. The objective will be to seek agreement on a scheme which would be submitted for a planning application.

### ***Land Acquisition***

19. The Land Acquisition Strategy (LAS) for the scheme is to acquire as much land as possible by private agreement. The Council will do this by approaching landowners, through its agents, to acquire the required land. If this is not possible, a CPO will be sought to acquire the necessary land but this is a 'last resort'.
20. A Compulsory Purchase Order should only be made where there is a compelling case in the public interest for making and promoting a CPO, the use of the powers is necessary and proportionate, and the public benefits associated with the proposed scheme will clearly outweigh the interference with the rights of those affected. These matters are referred to below, and will be considered further in detail in a future report to the Executive to seek authority for a CPO to be made. In summary, the key public benefits are as follows:-
  - Strategic Benefits

- Improved cross-country routes
- Better connectivity to the strategic road network e.g. A1(M)
- Local Benefits
  - Relieve congestion on the A1237
  - Improve air quality
  - Improve journey time reliability for all traffic including public transport
  - Creation of active travel networks
- Economic Benefits
  - Provide better access to employment sites
  - Provide capacity for new homes
  - Drive economic growth

21. In submitting the CPO to the Secretary of State for Transport for confirmation the Council must demonstrate that there are no impediments to implementation of the CPO. To do so, the Council must provide substantive information as to the sources of funding available for both acquiring the land and implementing the scheme for which the land is required. In this case, funding for the scheme is available through the West Yorkshire Plus Transport Fund and DfT Major Roads Network improvement grant, see paragraphs 24-26 below.
22. The Council must also show that the Scheme is unlikely to be blocked by any physical or legal impediments to implementation including any need for planning permission or other consent or licence. As stated in paragraph 10 it is proposed that a planning application is submitted for the Scheme in due course and that a planning permission will be in place before any formal steps are taken to make a CPO.
23. Turning to human rights issues, whilst this report only seeks an 'in principle' decision from the Executive that it is prepared to authorise the use of CPO powers to facilitate the scheme, officers would provide the following guidance at this stage on the human rights implications of pursuing CPO action.

24. The MHCLG Guidance on the CPO ('the Guidance') confirms that an acquiring authority should be sure that the purposes for which it is making a compulsory purchase order sufficiently justify interfering with the human rights of those with an interest in the land affected. Regard should be had, in particular, to the provisions of Article 1 of the First Protocol to the European Convention on Human Rights (ECHR) (right to the peaceful enjoyment of property) and, in the case of a dwelling, Article 8 of the ECHR (right to respect for private and family life, home and correspondence). In this case no dwellings are to be acquired to deliver the Scheme. Before deciding whether to authorise a CPO, the Executive will need to consider the balance and compatibility between the compulsory powers sought and the rights enshrined in the ECHR and whether there is a compelling case for a CPO in the public interest which means that the acquisition of land to enable the scheme to proceed, brings benefits to the area, which could not be achieved without the use of compulsory purchase powers.
25. Executive should note that approvals have already been given to undertake preparatory work for a possible CPO, including the appointment of external lawyers (Weightmans) and a land referencing exercise identifying all relevant land interests in the site to be occupied by the works is being progressed by Land Referencing Services (LRS).
26. Accordingly, whilst the case for making a CPO will be detailed in a future report, officers are of the view that a compelling case in the public interest for making and promoting a CPO could be made out and the use of the powers could be seen as both necessary and proportionate and the public benefits associated with the proposed works are likely to outweigh the interference with the rights of those affected. So whilst negotiations to acquire the necessary land by agreement are ongoing and will continue, in the event that these do not prove successful officers intend to take a report to a future Executive meeting requesting authority to make the Order.
27. In order to proceed with the efficient preparation, making and serving of the of the CPO and associated SRO, Executive are asked to note that delegated operational and detailed decision making has previously been given to the Assistant Director Transport, Highways and Environment to negotiate the terms of acquisition by private agreement for individual land interests. This delegation also includes negotiation of easements and temporary rights where freehold ownership is not required e.g. for drainage purposes, or temporary occupation for the construction works. This delegation will also include obtaining the release/extinguishment of,

or variation of, any third party rights over affected land (for example a third party might have a right of way over land which needs to be acquired). This delegation also includes acquisition of land up to £250k in any one interest.

## **Council Plan**

28. The Scheme proposals are embedded in the Council Plan 2019-23. The implementation of this programme of highway improvements will be an integral part of the key priorities to “create homes and a world class infrastructure; well paid jobs and an inclusive economy; getting around sustainably; a greener and cleaner city; safe communities and culture for all and an open and effective council”. Improvements to transport infrastructure such as reduced journey times are key drivers for improved productivity and unlocking sites for homes and jobs. This in turn leads to economic growth and the increase in wealth, helping local businesses to thrive.
29. As stated in paragraph 11 above, residents and stakeholders have been consulted about the scheme to ensure that consideration of the potential impact of decisions in relation to health, communities and equalities has been made.

## **Implications**

### **Financial Implications**

30. The estimated cost of the drafting of the CPO (£10k) and the purchase of interests in any land will be funded from the £66m capital allocation for the junction upgrade and dualling scheme funded by West Yorkshire Plus Transport Fund (£33m), Department for Transport (DfT) (£25m) and CYC contribution (£8m).
31. Should the Scheme ultimately not be delivered the land acquisitions would be retained as capital assets.

### **Human Resources**

32. The Major Transport Project Team will be the primary resource for this project. External advisors will be appointed where appropriate to provide additional resource and expertise.



## **One Planet Council / Equalities**

33. The One Planet Council Better Decision Making Tool has identified the following areas which can be explored further during the design and development of the whole YORR improvement programme:

- Greater consideration of renewable materials during construction.
- Consideration about the reduction of crime where subways are proposed.
- Enhanced Landscaping.<sup>1</sup>
- Use of Public Art to provide attractive spaces for residents.
- Enhanced Active Travel

<sup>1</sup> Notes on Better Decision Making Tool:

Commitment to a Landscape Strategy and inclusion of additional planted areas (Community Woodland) has now been included in the Scheme.

34. As noted above, a Compulsory Purchase Order should only be made as a last resort where there is a compelling case in the public interest that is considered to outweigh the human rights of the owners and occupiers affected. Together with an Equalities Impact Assessment, that case will need to be set out in a future report to the Executive to inform any decision on taking compulsory purchase action. This process will be informed by engaging with the various parties that fall within the proposed area of land for acquisition.

## **Legal and Procurement Implications**

35. CYC has the necessary powers to acquire land compulsorily for the Scheme. Part XII of the Highways Act 1980 includes a number of CPO powers to support the delivery of highways. These include:

- Section 239 of the 1980 Act pursuant to which the highway authority for the area may acquire land required for the construction of a highway, other than a trunk road, which is to become maintainable at the public expense, as well as any land required for the improvement of a highway.
- Section 240 of the 1980 Act, pursuant to which the highway authority may acquire land required for use in connection with construction or improvement of a highway and the carrying out of a diversion or other works to watercourses
- Section 246 of the 1980 Act pursuant to which the highway authority can acquire land for the purpose of mitigating any adverse effect which the

existence or use of a highway constructed or improved by them has or will have on the surroundings of the highway.

- Section 248 of the 1980 Act pursuant to which the highway authority can acquire land in advance of requirements
- Section 249 of the 1980 Act prescribes distance limits from the highway for the acquisition of land for certain purposes.
- Section 250 of the 1980 Act allows the highway authority to acquire rights over land, both by acquisition of those already in existence, and by the creation of new rights.

36. In the event that the CPO & SRO is required Legal Services will work closely with the external legal advisors to ensure there is continuity between the negotiated agreement process and any CPO process which may be required.

37. Legal Services will also advise and assist the project team in supervising the work of the Scheme lawyers appointed to support the preparation of a CPO and SRO.

### **Crime and Disorder**

38. There are no Crime and Disorder implications.

### **Information Technology**

39. There are no Information Technology implications.

### **Property**

40. Property Services are involved in this project acting as land managers for the council. New pieces of land will be acquired for the scheme, the titles for which will belong to the council. Property Services will also advise and assist the project team in supervising the work of the land agents, valuers and referencers.

### **Other**

41. There are no other known implications

### **Risk Management**

42. In compliance with the council's risk management strategy the main risks that have been identified in this report are those which could lead to financial loss, damage to the council's image and reputation and failure to meet stakeholders' expectations. Measured in terms of impact and likelihood, the land acquisition risk has been assessed at 21. This is classed as Major/Highly Probable and is the most significant live issue on the project. Other risks have been assessed at 14 or below. At this point the risks will be monitored and managed. A risk allowance has been estimated and is included within the current cost plan for the project. The top two risks currently affecting this project are:

- a. Risks associated with land acquisition. As described above, there is a high risk that some landowners may potentially be unwilling to sell land to the council by private agreement, or in a timely manner. This presents a programme risk potentially prolonging the time to complete the project, increase costs or lose the secured funding. In order to mitigate this risk, preparation of a CPO in parallel to land negotiation is being progressed as described in this report.
- b. Risks associated with utility diversions being more complex than anticipated. These could lead to programme delays and have a cost implication. Early meetings with utility companies are planned to mitigate these risks.

## Contact Details

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**Report**  **Date** 25 February 2021  
**Approved**

## **Specialist Implications Officer(s)** List information for all

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**Wards Affected:** List wards or tick box to indicate all

**All**

Rawcliffe & Clifton Without, Rural West York, Haxby & Wigginton;  
Huntington & New Earswick, and Strensall.

**For further information please contact the author of the report**

## **Background Papers:**

Executive Report 13<sup>th</sup> July 2017 2020 – Proposed York Outer Ring Road  
Improvement – Approach to Delivery.

Decision Session Transport & Planning 15<sup>th</sup> March 2018 – YORR Improvements – Proposed A1237/B1224 Wetherby Road Junction Upgrade.

Decision Session Transport & Planning 13<sup>th</sup> September 2018 – YORR – Proposed A1237 Monks Cross Junction Upgrade.

Decision Session Transport 29<sup>th</sup> August 2019 – YORR – Proposed A1237 Clifton Moor Junction Upgrade.

Executive Report 26<sup>th</sup> September 2019 – YORR Update.

Executive Report 13<sup>th</sup> February 2020 - York Outer Ring Road (YORR) Improvements – Proposed Phase 1 Dualling from A19 Rawcliffe to A64 Hopgrove.

Executive Report 25<sup>th</sup> June 2020 - YORR Phase 1 Dualling - Procurement Strategy, Approach to Public Engagement and Landscaping.

### **List of Abbreviations Used in this Report**

WYCA – West Yorkshire Combined Authority

YORR – York Outer Ring Road

CYC – City of York Council

WY+TF – West Yorkshire Plus Transport Fund

DfT – Department for Transport

MRN – Major Roads Network

CPO – Compulsory Purchase Order

MHCLG – Ministry of Housing, Communities & Local Government

YORR – York Outer Ring Road

### **List of Annexes**

Annex A Proposed YORR Dualling Scheme (A19 Rawcliffe to A1036 Little Hopgrove).