



CABINET – 26 APRIL 2022

**NORTH AND EAST MELTON MOWBRAY DISTRIBUTOR ROAD –
LAND ASSEMBLY**

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 the approach to land assembly required to support the delivery of the North and East Melton Mowbray Distributor Road (NEMMDR) scheme, including the implementation of the Compulsory Purchase Order (CPO) as soon as possible following service of notice of confirmation. The report also provides an update on the costs and delivery timescales for the scheme.

Recommendation

2. It is recommended:
 - (a) That 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. Agree minor alterations to the scheme that may arise as a consequence of detailed design work;
 - ii. Continue discussions with landowners and other stakeholders, with a view to reaching voluntary agreement over the purchase and/or reservation of rights over land for the northern and eastern sections of the MMDR where possible;
 - iii. Take all necessary steps to confirm and implement the Compulsory Purchase Order (CPO) and Side Roads Order (SRO) associated with the scheme pursuant to the Highways Act 1980 and the Acquisition of Land Act 1981;
 - (b) That the latest position with regard to costs and timescales for the implementation of the CPO and the scheme be noted.

Reason for Recommendation

3. The proposed approach to land assembly, by CPO, carries some financial risk to the County Council. However, to delay land assembly would:
 - (a) delay commencement of the project by circa six months;
 - (b) extend the construction duration; and
 - (c) affect the ecological mitigation programme.
4. An initial assessment suggests resulting total delays to road opening of circa nine months and an increased cost of approximately £1m, which could be further increased by inflation. The delay may also adversely affect the availability of funding.
5. The previous Cabinet approvals to implement the CPO were made on the basis that the NEMMDR scheme was fully funded. Implementing the CPO in June 2022 (or otherwise as soon as possible) would be before the approval of the Full Business Case (FBC) and so would be prior to having a fully funded scheme. It is considered therefore that the proposed approach requires the Cabinet's approval.

Timetable for Decisions (including Scrutiny)

6. The Secretary of State has now confirmed the CPO and associated SRO (the CPO and SRO together being referred to as the Orders). Arrangements are currently being made for the service and publication of the notice of confirmation.
7. Implementation of the land assembly approach is anticipated to commence in June 2022 to facilitate the programmed advance works. Entry to lands will be 3 months after implementing the CPO by service of a General Vesting Declaration (GVD) or Notice to Treat (NtT) and Notice to Enter (NtE).
8. A further report will be submitted to the Cabinet prior to the submission of the FBC in autumn 2022.
9. Main construction works are programmed to commence in early 2023. A further Cabinet report will be taken prior to issuing a 'notice to proceed,' which is the contractual mechanism to move the contractor, Galliford Try, into the construction phase.

Policy Framework and Previous Decisions

10. Several reports have been submitted to the Cabinet since December 2017 with regard to the NEMMDR, seeking support for the various stages of delivery including submission of Outline Business Case, planning application, the CPO and SRO.
11. In July 2018 the Cabinet agreed to submit a planning application for the NEMMDR in accordance with the Preferred Route. The Cabinet also agreed to make and implement a CPO and SRO based on the Preferred Route.

12. In March 2020, when the specific areas of land and rights over land required for the scheme had been identified, the Cabinet agreed to make a CPO and SRO as well as agreeing to minor amends of the same.
13. In September 2021 the Cabinet approved the revised capital programme 2021/22 to 2024/25 which included the latest cost estimate for NEMMDR.

Resource Implications

14. The current forecast cost for the NEMMDR is £85.3m. The Council has also allowed for an additional £5m of contingency to its programme to support the scheme.
15. Funding is made up of Department for Transport (DfT) Large Local Majors Funding of £49.5m, subject to approval of the FBC (programmed for submission in autumn 2022), LLEP Business Pool funding of £4m, and an anticipated £14m of developer contributions (in part forward funded by the Council). The local contribution is estimated to be £17.8m excluding contingency. Notwithstanding the risks associated with forward funding, further cost implications are likely to arise from inflationary cost pressures hindering delivery of the scheme in line with current cost estimates.
16. A detailed value engineering exercise is underway which will enable the contractor to provide a target cost for the scheme, anticipated to be in late summer 2022. The full costs will be reported to the Cabinet.
17. The proposed approach to land assembly carries a maximum risk of approximately £3.5m (more detail is given in Part B below). Additional information relating to scheme costs, including the contractor's target cost, will be available ahead of the advanced works proceeding on site which mitigates part of this risk.
18. The Director of Corporate Resources and the Director of Law and Governance have been consulted on 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, Mrs P. Posnett MBE CC, Mr. M. Frisby CC and Mr. B. Lovegrove CC

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PART B

Background

19. A number of reports have previously been taken to Cabinet at key stages detailing the background, justification and development of NEMMDR, summarised in Part A above.
20. The NEMMDR 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.
21. Where possible, it is hoped that the acquisition of land and rights will be achieved by negotiation and agreement with landowners. However, alongside and in conjunction with the negotiations with the landowners, it was essential to commence the preparation for the use of the compulsory purchase powers to procure land and rights along the route.
22. There was a compelling case in the public interest to justify acquiring land by compulsory purchase under the provisions of the Highways Act 1980 and the Acquisition of Land Act 1981 to facilitate the delivery of the scheme. Such public interest justifies interfering with the rights of those persons with an interest in the land required for the scheme, should agreement not be reached.
23. The CPO and SRO were made by the County Council on 29 July 2020 and published on 8 October 2020. There were 22 objections to the Orders received. After a period of negotiation, 12 remaining objections were considered at the Public Inquiry presided over by a Planning Inspector, which was held between 21 and 30 September 2021. The Public Inquiry was closed by the Inspector on 8 October 2021 subsequent to which she submitted her report to the Secretary of State for Transport with her recommendations.

Confirmation

24. The Secretary of State has now confirmed the Orders, and it is necessary to serve a confirmation notice upon every owner, tenant and occupier, to affix a confirmation notice on or near the land in the CPO and leave it in situ for six weeks, and to publish a confirmation notice in a local newspaper within six weeks. Accordingly, arrangements are currently being made to serve the confirmation notice. The notice provides that any person aggrieved by the order may apply to the High Court within six weeks following publication of the notice.
25. Once confirmation is published, the Council, as Acquiring Authority, has the power to compulsorily acquire the lands and rights over land as identified in the CPO (subject to modifications) subject to no applications being made to the High Court as set out above. The publication of the notice also triggers the three-year period within which the CPO must be implemented.

26. The existing Cabinet resolutions provide sufficient authority to publish the confirmation notice. There is no material financial risk in doing so and there is a statutory requirement to do so.

Implementation of the CPO

27. Implementation by General Vesting Declaration (GVD) is generally the preferred approach for the permanent land assembly. Implementation by Notice to Treat (NtT) and Notice to Enter (NtE) is generally the preferred approach for the lands required temporarily or where it is uncertain how much land will be required permanently for the scheme. There are some exceptions, for example, rules regarding minor tenancies and long tenancies about to expire, and also due to various legal agreements entered into as part of the negotiations to secure withdrawal of objections to the CPO.
28. Both the GVD and NtT/NtE have a three-month notice period before entry can be gained. Notice of the making of the GVD must be served upon every occupier of any of the land specified in the GVD and the three-month period for taking entry begins after the notice is served.
29. Using powers ensures that all the land and rights are assembled without adverse effect on the project programme. It is a certain, quick, and simple process which has minimal legal costs. Conversely, acquiring land and rights over land by negotiation is an uncertain, slow, and highly complex process and officers would not have recommended taking this route in this case. Using powers removes the need to negotiate costs and empowers the Council as Acquiring Authority to enter land and take possession without having agreed compensation. An advanced payment of compensation becomes due on entry and is typically paid within two months, with the remainder subject to negotiation. If a landowner does not eventually agree the compensation offered by the Council, then they can refer the matter to the Lands Tribunal within six years of the Council taking entry.
30. Use of a GVD is final as it cannot be revoked. The title to all lands contained within a GVD would vest in the Council. Use of the NtT/NTE procedure requires a separate transfer of each parcel of land in order to vest the title in the Council. It provides flexibility in that only the title to the land required permanently will vest in the Council at the date of transfer.

Programme and Funding

31. A substantial advanced works programme including archaeological mitigation works is planned to commence in September 2022. During the same period ecological works to relocate badgers will also be undertaken together with preliminary site access works such as construction plant crossings and establishment of compounds.
32. The FBC submission, required to secure and finalise the DfT element of funding for the project, is expected to be submitted in late September 2022.

Approval timescales are estimated to be 12 weeks, enabling main construction works to commence in February 2023 (subject to Cabinet approval).

33. The main construction works are anticipated to start on site in February 2023.
34. The current scheme costs are based on this programme.

Next Steps

35. To enable the advanced works programme to commence in September 2022 and therefore the main works in February 2023 – these being sequential – it is proposed to implement the CPO without a delay, in June 2022. This will enable access to the land required for the scheme in September 2022, following the notice period associated with GVD and NtT/NtE. This approach avoids further costs and risks associated with a delay.
36. The previous Cabinet approvals to implement the CPO was drafted on the assumption that the scheme was fully funded. Implementing the CPO in June 2022 (or otherwise as soon as possible) would be before the approval of the FBC and so would be prior to having a fully funded scheme. The proposed approach therefore requires additional approval.

Risks in the Proposed Approach to Land Assembly

37. The principal risk associated with the proposed strategy would be a financial and reputational risk, realised only if the scheme were not to proceed.
38. In this case, the Council will have acquired parcels of land which are unnecessary and will become surplus to requirement, and in some cases against landowner wishes.
39. The estimated land compensation costs are approximately £2.3m and the advanced works approximately £1.2m. Such land would be offered back to the landowners from whom the parcels were acquired under the Crichel Down rules (these being the rules relating to the disposal of surplus land acquired by, or under the threat of, compulsion), but it is likely that only a small proportion of the costs would be recovered.
40. The proposed approach therefore carries a maximum risk of approximately £3.5m (land compensation at £2.3m and advanced works at £1.2m). Additional information relating to scheme costs will be available ahead of the advanced works proceeding on site which mitigates part of this risk.

Other Options Considered for Land Assembly

41. Other options for land assembly were considered and rejected as follows -
 - (a) Access land by negotiation. This is an uncertain, slow and highly complex process which is likely to increase costs and introduce delays. There is a risk that landowners, including objectors to the scheme, would

reject the Council's approach, excluding this as a viable option (this is evidenced by lessons learned on previous schemes).

- (b) Delay land assembly until the scheme is fully funded. This would delay commencement of the project by circa six months, extend the construction duration and affect the ecological mitigation programme. An initial assessment suggests resulting total delays to road opening of circa nine months and an increase cost of approximately £1m. Inflation could further increase this cost. The delay may also adversely affect the availability of funding.

Timetable for Implementation of the NEMMDR

42. Subject to the confirmation of the CPO by the Secretary of State, it is currently expected that the scheme programme will be as follows:-

Action	When
Publish and serve notice of Confirmation	April 2022
Serve GVD(s)/NtT/NtE(s)	June 2022
Target cost received	August 2022
Enter lands	September 2022
Commence advanced works	September 2022
Cabinet approval of FBC	September 2022
Cabinet approval for main construction	December 2022
Start main construction	Early 2023
Road opening	Spring 2025

Equality and Human Rights Implications

43. An Equality and Human Rights Screening Report has previously been produced for this scheme and submitted as part of the Cabinet report in July 2018.
44. The 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.
45. The impact on equalities and human rights was a key consideration for the planning inspector at the public inquiry into the application for the CPO and SRO.
46. Therefore, there are no additional equalities and human rights implications arising from the recommendations of this report.

Environmental Implications

47. A full assessment of the environmental impacts of the scheme was conducted as part of the Environmental Impact Assessment submitted with the planning application. This can be viewed online through the County Council's planning portal.
48. There are no additional environmental implications arising from the recommendations of this report.

Background Papers

Report to the Cabinet on 6 July 2018 – 'North and East Sections of the Melton Mowbray Distributor Road Proposals'

<https://politics.leics.gov.uk/ieListDocuments.aspx?CIId=135&MID=5412#AI56249>

Report to the Cabinet on 25 June 2019 – 'North and East Melton Mowbray Distributor Road - Outcome of Planning Application'

<https://politics.leics.gov.uk/ieListDocuments.aspx?CIId=135&MID=5604#AI59992>

Report to the Cabinet on 24 March 2020 – 'North and East Melton Mowbray Distributor Road - Making of the Compulsory Purchase Order and Side Roads Order for Land Required'

<https://politics.leics.gov.uk/ieListDocuments.aspx?CIId=135&MID=5993#AI62737>

Report to the Cabinet on 17 September 2021 – 'Medium Term Financial Strategy – Latest Position'

<https://politics.leics.gov.uk/ieListDocuments.aspx?CIId=135&MIId=6446>