

Report to Cabinet

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| Title: | South East Aylesbury Link Road: Land Acquisition and CPO update, Planning Application update, Side Roads Order and Section 19 Application |
| Date: | Monday 9 December 2020 |
| Date can be implemented: | Tuesday 17 December 2019 |
| Author: | Deputy Leader & Cabinet Member for Transportation, Leader of the Council |
| Contact officer: | Thomas Fitzpatrick, 01296 387105 |
| Local members affected: | Aston Clinton & Berton; Aylesbury East; Aylesbury South East; Wendover, Halton & Stoke Mandeville; |
| Portfolio areas affected: | Transport, Resources and Leader of the Council |

For press enquiries concerning this report, please contact the media office on 01296 382444

Summary

This report seeks authorisation for the making of Side Roads Order and submission of an application to the Secretary of States for a certificate under section 19 of the Acquisition of Land Act 1981 to facilitate the delivery of the South East Aylesbury Link Road ("SEALR"). This report will also provide updates to cabinet on the status of the SEALR planning application and an update to the Compulsory Purchase Order process to be undertaken by the project.

The SEALR is a proposed new classified link road which will connect the B4443 Lower Road with the A413 Wendover Road. The requirement for the SEALR to come forward now has arisen as a result of the HS2 realignment of the A4010 ('Stoke Mandeville bypass'). Transport modelling has shown that the Stoke Mandeville bypass causes significant congestion at the Aylesbury gyratory due to traffic reassignment at this junction, which is already operating over capacity. The SEALR is required to relieve this additional congestion and improve connectivity around Aylesbury. The SEALR also forms part of the emerging vision for Aylesbury Garden Town and is a key part of the adopted Aylesbury Transport Strategy. Development of land in close proximity to the scheme and an allocation in the draft Vale of Aylesbury Local Plan has provided further need to bring the scheme forward.

Recommendation

The Cabinet is requested to authorise:

- (1) The making of a Side Roads Order(s) (“SRO”) under sections 14 and 125 of the Highways Act 1980 and all other necessary powers to:
 - (a) improve, raise, lower, stop up, divert or otherwise alter existing highways which cross or enter the route of the SEALR or will otherwise be affected by the construction of the SEALR or as required to deliver the SEALR;
 - (b) construct new lengths of highways for purposes connected with the alterations referred to in (a) above and delivery of the SEALR; and
 - (c) stop up private means of access and provide replacement or new means of access.
- (2) The submission of an application to the Secretary of State for a certificate under section 19 of the Acquisition of Land Act 1981.
- (3) The Director of Property and Assets (or such other appropriate officer) to:
 - (a) Make and issue the SRO and the section 19 application including the service and publication of all requisite notices and press notices;
 - (b) take all necessary steps to settle any objections made to the SRO, the section 19 application and the compulsory purchase order (“CPO) to be made to secure delivery of the SEALR including amendments to the SRO, the section 19 application;
 - (c) negotiate and enter into agreements or undertakings with persons with any legal interest in the land relating to the SRO and/or the CPO;
 - (d) make any amendments necessary to the SRO and/or the CPO arising as a result of negotiations with affected persons, further design work, section 19 application or for any connected reasons to enable delivery of the SEALR;
 - (e) take all necessary steps to secure settlement of compensation arising from implementation of the SRO and/or the CPO including referral to the Upper Tribunal (Lands Chamber); and,
 - (f) take any further or other action necessary to secure the making, confirmation and implementation of the SRO and/or the CPO, and or/ the section 19 application.

The Cabinet is asked to note

- (4) The updated land budget for the acquisition of land required for the scheme
- (5) That the Director of Property and Assets (or such other appropriate officer) will be serving a Compulsory Purchase Order on all those with an interest in the land affected by the scheme and will continue to negotiate to acquire those interests by agreement. There would be no requirement to hold a CPO inquiry if all interests and objections are settled beforehand.
- (6) The SEALR planning application will be submitted by the end of 2019/ early 2020.

A. Narrative setting out the reasons for the decision

1. Background

Transport modelling has shown that the planned HS2 realignment of the A4010 will cause significant congestion at the Aylesbury gyratory as a result of the traffic reassignment at this junction that is already operating over capacity. The SEALR has been shown to be the best possible solution to relieving this additional congestion and improving connectivity around Aylesbury.

The SEALR forms part of the Council's long term vision to deliver an orbital route around Aylesbury and is also a key piece of infrastructure to support the delivery of the Buckinghamshire Local Transport Plan 4, the BTVLEP strategic transport objectives and the Vale of Aylesbury Local Plan ("VALP") which was recently subject to examination in public.

The SEALR will deliver a link road between the realigned A4010 junction with the B4443 and the A413 Wendover Road (linking into a proposed development at the site known as Hampden Fields).

The SEALR will be built as a dual carriageway in line with the Council's policy to deliver all link roads around Aylesbury as either a dual carriageway or with passive provision for dualling. The key infrastructure on the SEALR will be an overbridge crossing the London Marylebone to Aylesbury railway line.

On 13 November 2017, Cabinet authorised the making of a CPO for the purpose of assembling and acquiring the land necessary to deliver the SEALR in the event that negotiations to acquire the land and interests by agreement are unsuccessful. This paper provides an update on the land acquisition CPO budget as part of Confidential Appendix A.

2. Planning application update

The planning application will be submitted to Buckinghamshire County Council as the highways authority. Changes to the planning application scheme since consultation with the public include:

- Following surface water flooding modelling the following has been incorporated:
 - o Addition of culvert in the west to convey surface water
 - o Revisions to the size of culverts
 - o Incorporation of flood storage area near the A413 Wendover Road
- Relocation of attenuation pond in the east adjacent to Wendover Road further west to allow for the flood storage area
- Revisions to the vertical alignment of the road to reduce embankment impacts and visual impact on the properties in close proximity to the scheme
- Revisions to the landscaping to ensure 10% biodiversity net gain is achieved (in line with new Council guidance)
- Small changes to the alignment of the exits of the roundabout in response to transport modelling
- Changes to the red line boundary to reduce overall land take requirements following bio diversity net gain analysis

The scheme has also been realigned slightly to move the scheme away from the existing housing estate. This realignment has resulted in the scheme being up to 10

meters further away from existing housing, this has benefits in terms of noise, vibration and air quality.

3. CPO update

In November 2017 Cabinet delegated authority to the Director of Growth and Development Strategy and Highways (or responsible officer) to make a CPO for land required for the SEALR. The CPO is required to ensure the programme for delivery of the SEALR is met. In total 13 different landowners are affected by the scheme and any one of these could be an impediment to delivery of the Scheme without a CPO being confirmed and empowering the Authority to acquire the necessary land.

Over the subsequent two years since the decision, changes in scheme design have resulted in a lesser land area being required to deliver the current proposed design. In addition the part of the land required for the scheme and its adjoining land has been allocated in the draft Vale of Aylesbury Local Plan resulting in changes to the land valuation. Updated valuations and budget are set out in Confidential Appendix B.

4. Side Roads Order

The SRO is required under sections 14 and 125 of the Highways Act 1980. The SRO will authorise BCC to improve, raise, lower, stop up, divert or otherwise alter existing highways that cross or enter the route of the SEALR or which will otherwise be affected by the construction of the SEALR. The power also extends to construction of new lengths of highways for purposes connected with the alterations made to the existing highways.

The SRO will also authorise the stopping up and provision of replacement or new private means of access to premises/land.

The following are some of the works for which an SRO may be required:

- Provision of a new junction at the eastern end of the SEALR to connect with the A413 (Wendover Road) to the north and south and the proposed Southern Link Road at Hampden Fields to the east;
- Amendments to the A413 (northern and southern arms);
- Provision of a new junction at the western end of the SEALR to connect with the B4443 (Lower Road) to the north and south and the new Stoke Mandeville Relief Road (realigned A4010) to the west using a new roundabout with amendments to the Lower Road arms (north and south arms);
- A shared cycle/footway on the northern side of the SEALR to include the realignment of a footpath(s);
- A footpath on the southern side of the SEALR;
- New agricultural accesses from the SEALR for landowners/ occupiers and maintenance accesses from the SEALR to the bridge structure and the attenuation ponds.

Attached as Appendix C is a preliminary design plan of the SEALR with the proposed SRO works.

A notice of the making of the SRO will be published in at least one local newspaper circulating in the areas where the highways to which the SRO relates are situated and in the London Gazette before the SRO is submitted to the Secretary of State for Transport for confirmation.

There will be a minimum six week period for representation and objections to be made to the SRO. Objections to the SRO are made directly to the Secretary of State for Transport. The SRO must be made before the CPO is confirmed.

5. Section 19 Certificate application

The proposed CPO includes acquisition of areas of public open space comprising 1,576 square metres in total. This area is required for highway and landscaping purposes and is required on a permanent basis.

Where a CPO authorises purchase of open space, the CPO will be subject to special parliamentary procedure unless the Secretary of State for Housing, Communities and Local Government gives a certificate under section 19 of the Acquisition of Land Act 1981 confirming that either:

- exchange land is being given which is no less in area and equally advantageous as the land taken (section 19(1)(a)); or
- that the land is being purchased to ensure its preservation or improve its management (section 19(1)(aa)); or
- that the land is 250 sq. yards (209 square metres) or less in area **and** that the giving of exchange land is unnecessary (section 19(1)(b)); or
- that the land is for the widening and/or drainage of an existing highway **and** that the giving of exchange land is unnecessary (section 19(1)(b)).

An options assessment of the land to be used as replacement open space will be undertaken by the Council to ensure the site chosen is appropriate.

B. Other options available, and their pros and cons

The alternative option is for the Cabinet to resolve not to approve the SRO. This option will leave the Council at risk of not being able to deliver the scheme as the SEALR cannot progress without the SRO being in place. A failure to deliver the SEALR has implications for the forecasted increased congestion at the Aylesbury gyratory resulting from the realignment of the A4010 and the detrimental impacts this could have on the local economy. It would also mean that the policy aim to deliver an Aylesbury Orbital Link Road would not be achieved.

Further, if authority is not given to make the section 19 application to the Secretary of State, then confirmation of the CPO will be made subject to special parliamentary procedure which could delay delivery of the SEALR (see legal section for details on the special parliamentary procedure).

If a SRO process is not entered into a definitive timescale for delivery of the scheme will not be possible to determine.

C. Resource implications

The Council will be responsible for the legal and administrative costs of the making, publication, confirmation and implementation of the SRO including any public inquiry held by the Secretary of State to determine objections to the SRO and the section 19 application.

The budget for the scheme has been updated through the Strategic Transport Infrastructure Board (STIB) and will be updated in the Medium Term Financial Plan.

This update will also be provided to the Shadow Executive for the new Buckinghamshire Authority.

There are no anticipated staffing impacts resulting from the recommendations set out in this report.

D. Value for Money (VfM) Self Assessment

This decision will not have major financial implications on the scheme as a budget has been secured to take the scheme through to end of construction.

E. Legal implications

As the highway authority for the proposed SEALR, BCC has powers under sections 14 and 125 of the 1980 Act to make the SRO and to submit the order to the Secretary of State for confirmation.

If confirmed by the Secretary of State, the SRO will authorise BCC to stop up, divert, raise, lower, improve or otherwise alter existing highways that cross or enter the route of the SEALR or will be otherwise affected by the construction of the SEALR. Such existing highways could be a carriageway, footpath, bridleway or cycle track.

Before submitting the SRO to the Secretary of State, BCC is required by law to publish the SRO and to take steps to bring the proposals fully to the attention of the general public especially persons who will be directly affected by the SRO. Where objections are made to the SRO which are not withdrawn, the Secretary of State will hold an inquiry to consider the objections.

The SRO will also authorise BCC to stop up private means of access and provide replacement or new means of access to premises/land. By virtue of section 125 (3) of the Highways Act 1980, the Secretary of State cannot authorise stopping up of any private means of access pursuant to the SRO unless he is satisfied that the access to premises is not reasonably required or that another reasonably convenient means of access to the premises is available or will be provided.

Where a private means of access is stopped up pursuant to an SRO and a person suffers damage due to a depreciation of the person's interest in the premises or the person is disturbed in his enjoyment of the premises, then BCC will be liable to pay compensation to such a person pursuant to section 126 (2) of the Highways Act 1980.

As part of the land required to deliver the SEALR constitutes open space, confirmation of the proposed CPO will be subject to the special parliamentary procedure unless a certificate under section 19 of the Acquisition of Land Act 1981 is issued by the Secretary of State for Housing, Communities and Local Government confirming that either exchange land will be given for the land being taken or that such exchange land is not necessary because the land being taken is no more than 209 square metres or that the land is required for the widening/drainage of existing highways. Until the special parliamentary procedure has been concluded, BCC will not be able to publish and serve notice of confirmation of the CPO in the normal way.

In brief, the special parliamentary procedure comprises the following:

- If the Secretary of State for Transport decides to confirm a CPO which includes public open space, a notice of the decision to confirm the order will be published in the London Gazette and the CPO will be laid before Parliament.

- If a petition is lodged against confirmation of the CPO within a 21 day period, the CPO will be referred to a Joint Committee of the House of Commons and the House of Lords to consider and report to Parliament. Parliament will then decide whether to approve or reject the CPO.
- If no petition is lodged against the CPO within the 21 day period, then Parliament will usually approve confirmation of the CPO.

The application to the Secretary of State for Housing, Communities and Local Government for a section 19 certificate is therefore necessary to avoid the special parliamentary procedure in the event that the Secretary of State for Transport is minded to confirm the CPO of the open space and other land required to deliver the SEALR.

If the Secretary of State for Housing, Communities and Local Government is satisfied that a section 19 certificate could, in principle, be given, he will direct BCC to publish notice of his intention to give a certificate so representations and objections may be submitted. If objections are raised to the section 19 application, the objections will be considered at the inquiry into the CPO for the SEALR and the appointed inspector will make a recommendation to the Secretary of State. The final decision on the section 19 application will be made by the Secretary of State for Housing, Communities and Local Government.

Human Rights Implications

In deciding whether to proceed with compulsory purchase and Side Road Order and SRO Members will need to consider the Human Rights Act 1998 and Article 1 of the First Protocol and Article 8 to the European Convention on Human Rights. Article 1 protects the rights of everyone to the peaceful enjoyment of their possessions. No person can be deprived of their possessions except in the public interest and subject to national and international law.

Article 8 protects private and family life, the home and correspondence. No public authority can interfere with this interest except if it is in accordance with the law and is necessary in the interests of national security, public safety or the economic well-being of the country.

Members will need to balance whether the exercise of these powers are compatible with the European Convention on Human Rights. In weighing up the issues it is considered that the acquisition of land which will bring benefits to the residents and businesses that could not be achieved by agreement and this outweighs the loss that will be suffered by existing landowners. The CPO and SRO will follow existing legislative procedures.

All parties have the right to object to the CPO and the SRO and to attend a public inquiry arranged by the Secretary of State. Parties not included in the CPO may be afforded that right if the inquiry inspector agrees.

The decision of the Secretary of State can be challenged for legal defects in the High Court at an independent tribunal. Those whose land is acquired or rights or interests are interfered with will receive compensation based on the Land Compensation Code and should the quantum of compensation be in dispute the matter can be referred to the Upper Tribunal (Lands Chamber) for independent and impartial adjudication.

The Courts have held that this framework complies with the Convention on Human Rights. Accordingly, a decision to proceed with the recommendation on the basis that

there is a compelling case in the public interest would be compatible with the Human Rights Act 1998.

Equality Implications

All public sector acquiring authorities are bound by the Public Sector Equality Duty as set out in section 149 of the Equality Act 2010. In exercising their compulsory purchase and Side Roads (and related) powers (eg powers of entry) acquiring authorities must have regard to the effect of any differential impacts on groups with protected characteristics.

In progressing the Orders and carrying out consultations the Council will take into account the needs of persons with protected characteristics as set out in equalities legislation. In deciding to proceed with the CPO and SRO the Council must pay due regard to its Public Sector Equality Duty.

In summary, the Council must, in the exercise of its functions, have due regard to the need to:

- (a) eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act;
- (b) advance equality of opportunity between people who share a protected characteristic and those who do not;
- (c) foster good relations between people who share a protected characteristic and those who do not.

The protected characteristics are:

- Age
- Disability
- Gender reassignment
- Marriage and civil partnership
- Pregnancy and maternity
- Race Religion/belief (including non-belief)
- Sex
- Sexual orientation

In implementing this scheme and exercising the powers necessary for delivery it is not considered that any group with protected characteristics are adversely affected under the Equality Duty. In addition an Equalities Impact Assessment will be submitted and will be considered by the Local Planning Authorities during their consideration of the planning application.

F. Property implications

All property implications have been set out above and in confidential Appendix A. Once constructed the scheme will be adopted by the County Council and therefore the land will be owned and maintained by the Highway Authority.

G. Unitary Council

The CPO and planning application will both be resolved after Unitary. There are no foreseen implications of this decision in relation to Unitary.

H. Other implications/issues

There are no other implications to this decision.

I. Feedback from consultation, Local Area Forums and Local Member views

All Local members have been shared a draft copy of this report (on 16th October 2019) with a deadline for comments of the 25th October.

No comments were received from Councillors

It should be noted that Councillors have been regularly briefed on the scheme and have supported all previous decisions that have been made.

J. Communication issues

There are no known communication issues relating to this decision.

K. Progress Monitoring

Not applicable.

L. Review

Not applicable.

Background Papers

November 2017 decision on CPO:

<https://democracy.buckscc.gov.uk/ieDecisionDetails.aspx?ID=6903>

Appendices

Appendix A- Confidential- Land Acquisition Strategy

Appendix B- Confidential- Land Valuation

Appendix C- Plan of the Proposed Scheme

Your questions and views

If you have any questions about the matters contained in this paper please get in touch with the Contact Officer whose telephone number is given at the head of the paper.

If you have any views on this paper that you would like the Cabinet Member to consider, or if you wish to object to the proposed decision, please inform the Democratic Services Team by 5.00pm on Friday 6 December 2019. This can be done by telephone (to 01296 382343), or e-mail to democracy@buckscc.gov.uk