

# Report of the Strategic Director – Regeneration to the meeting of Executive to be held on 14 June 2016.

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## Subject:

**West Yorkshire+ Transport Fund Projects Compulsory Purchase Order and Side Roads Order powers under Highways Act 1980**

## Summary statement:

This report seeks Executive's approval for the promotion of the following Side Roads Orders (SRO) under the Council's powers under sections 14 and 125 of the Highways Act 1980 and all other powers enabling it in that behalf for the delivery of the the West Yorkshire+ Transport Fund projects of Harrogate Road / New Line and A650 Hard Ings Road, Keighley:

- City of Bradford Metropolitan District Council (A650 Hard Ings Road Improvement, Keighley) (Side Roads) Order 2016
- City of Bradford Metropolitan District Council (Harrogate Road / New Line junction improvements) (Side Roads) Order 2016

The report also seeks approval to include the use of those powers under Section 260 of the Highways Act 1980 and Section 40 of the Road Traffic Regulations Act 1984 which may be appropriate to the delivery of each respective scheme where these were not previously approved by Executive.

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### Overview & Scrutiny Area:

Environment & Waste



## 1. SUMMARY

- 1.1. This report seeks Executive's approval for the promotion of the following Side Roads Orders (SRO) under the Council's powers under sections 14 and 125 of the Highways Act 1980 and all other powers enabling it in that behalf for the delivery of the the West Yorkshire+ Transport Fund projects of Harrogate Road / New Line and A650 Hard Ings Road, Keighley:
  - a) City of Bradford Metropolitan District Council (A650 Hard Ings Road Improvement, Keighley) (Side Roads) Order 2016 .
  - b) City of Bradford Metropolitan District Council (Harrogate Road / New Line junction improvements) (Side Roads) Order 2016.
- 1.2. The report also seeks approval to include the use of those powers under Section 260 of the Highways Act 1980 and Section 40 of the Road Traffic Regulations Act 1984 which may be appropriate to the delivery of each respective scheme where these were not previously approved by Executive.

## 2. BACKGROUND

- 2.1. In December 2015 Executive considered a report entitled 'West Yorkshire+ Transport Fund – Harrogate Road / New Line Junction Improvement Update and Compulsory Purchase Order (Highways Act 1980)' and approved the exercising of the Council's powers to compulsorily acquire the necessary land for the delivery of the scheme. Similarly, in January 2016 Executive considered a further report entitled 'West Yorkshire+ Transport Fund – A650 Hard Ings Road Improvement Update and Compulsory Purchase Order (Highways Act 1980)' and again approved the use of the Council's CPO powers.
- 2.2. Whilst both reports made reference to the potential requirement to promote a Side Roads Order the specific resolutions of both reports were silent on seeking Executive's approval for the use of the necessary powers to permit the promotion of a Side Roads Order as at the time of writing Counsel opinion was being sought about whether such powers were required.
- 2.3. A Side Roads Order (SRO) is a statutory order which authorises a highway authority to make alterations to roads (e.g. stopping up, diverting or changing their connections to the highway) together with stopping up and replacing private means of access off the highway network as defined by Section 14 (Powers as respects roads that cross or join trunk or classified roads) of the Highways Act 1980. SRO's are normally progressed at the same time as the Compulsory Purchase Order.
- 2.4. The initial confusion as to whether or not such an order was required in connection with either of the West Yorkshire+ Transport Fund projects arose as a result of interpretation of Department for Transport guidance which appeared to indicate that the scope of works proposed on both schemes was outside the need for such orders. Therefore definitive confirmation on whether or not a Side Roads Order would be required was sought from Counsel as without this power the Council could not carry out the necessary alterations to the existing highway and accesses. Subsequent to Executive's consideration of both reports it has

now been confirmed that a Side Roads Order will be necessary for both of the current WY+TF projects and therefore specific authorisation of Executive to both these orders is required.

### **3. OTHER CONSIDERATIONS**

- 3.1. The Side Roads Order (SRO) will, subject to Confirmation of the Secretary of State for Transport, empower the Council to stop up existing side roads and private means of access affected by the scheme, improve existing side roads and create new side roads and private means of access as a consequence of the works.
- 3.2. The layout of both WY+TF schemes remains subject to change as further refinement of the design takes place up to the Gateway 2 (Construction procurement approval) submission to the West Yorkshire Combined Authority (WYCA).
- 3.3. As a consequence of the continued development of the proposed detail of the West Yorkshire+ Transport Fund (WY+TF) schemes the need to acquire land for the purposes of replacing existing off-street parking provision impacted by the scheme proposals has been identified. The Council have powers under Section 40 of the Road Traffic Regulations Act 1984 to acquire land for the purposes of providing off-street parking places together with means of entrance and egress.

### **4. FINANCIAL & RESOURCE APPRAISAL**

- 4.1. There are no specific funding issues associated with the scope of this report as funding for the delivery of the West Yorkshire+ Transport Fund schemes remains as described previously.
- 4.2. The staff resources and specialist technical services required to develop the scheme referred to in this report are funded through the scheme budget.

### **5. RISK MANAGEMENT AND GOVERNANCE ISSUES**

- 5.1. Responsibility for the governance of this project is the responsibility of the WYCA and is controlled under their Assurance Framework. A rigorous project management system is in place for all WY+TF projects based around the OGC PRINCE2 (Projects in Controlled Environments) and MSP (Managing Successful Programmes) methodologies. The scheme described in this report will be subject to these processes.
- 5.2. Entering into the CPO and SRO process offers the 'security' that the WY+TF requires ensuring a successful delivery of the project. Negotiations will continue in parallel to the CPO proceedings to ensure that where possible agreement is reached by private treaty outside of the CPO process.
- 5.3. Progression of a CPO and SRO would only occur after allowing an opportunity for any final negotiations. Ultimately however, the making of a CPO and SRO could be the only way to resolve the major area of uncertainty that could otherwise delay the proposed project programme.

## **6. LEGAL APPRAISAL**

- 6.1. The Council should use a specific power of compulsory purchase where available rather than a more general power. It is possible that the Council could use those powers contained in the Town & Country Planning Act 1990 in respect of the general economic wellbeing of the area but, as this is a highways issue, the Highways Act powers are appropriate.
- 6.2. It has been pointed out that the use of compulsory purchase powers should be considered as a matter of last resort and that a compelling case in the public interest must be made out. Members are advised that acquisition by negotiation should continue and that the making of a resolution, or indeed the CPO itself does not require that these be discontinued. Circular 06/2004 states:

*“Before embarking on compulsory purchase and throughout the preparation and procedural stages, an acquiring authority should seek to acquire land by negotiation where practicable. The compulsory purchase of land is intended as a last resort in the event that attempts to acquire by agreement fail. Acquiring authorities should nevertheless consider at what point the land they are seeking to acquire will be need and, as a contingency measure, should plan a compulsory purchase timetable at the same time as conducting negotiations. Given the time which needs to be allowed to complete the compulsory purchase process, it may be more often sensible for the acquiring authority to initiate the formal procedures in parallel with such negotiations”.*

Whilst the Strategic Director of Regeneration will be approaching land owners of the land required for the schemes, there is no guarantee that they would be prepared to sell by agreement. To ensure progression of the schemes, it is therefore recommended that the Council progresses a Compulsory Purchase Order to acquire the land.

## **7. OTHER IMPLICATIONS**

### **7.1. EQUALITY & DIVERSITY**

Due consideration has been given in writing this report to the Council’s duties under Section 149 of the Equalities Act 2011.

### **7.2. SUSTAINABILITY IMPLICATIONS**

The use of powers under Section 40 of the Road Traffic Regulations Act 1984 to allow purchase of land for the provision of off-street parking facilities will ensure that current areas of off-street parking provision can be replaced as part of the delivery of the WY+TF projects.

### **7.3. GREENHOUSE GAS EMISSIONS**

There are no greenhouse gas emission implications associated with the content of this report.

#### **7.4. COMMUNITY SAFETY IMPLICATIONS**

The WY+TF schemes will facilitate the introduction of safe pedestrian and cycling facilities as well as improving street lighting and providing other environmental improvements. These will have a beneficial impact on Community Safety.

#### **7.5. HUMAN RIGHTS ACT**

The Human Rights Act 1998 places direct obligations on public bodies such as the Council to demonstrate that the use of compulsory purchase powers is in the public interest and that the use of such powers is proportionate to the ends being pursued.

It is acknowledged that the compulsory acquisition of the Order Land could amount to an interference with the human rights of those with an interest in the Land. These rights include those under Article 1 of the First Protocol of the European Convention on Human Rights (“ECHR”) (which provides that every natural or legal person is entitled to peaceful enjoyment of his possessions) and Article 8 of the ECHR (which provides that everyone has the right to respect for his private and family life, his home and his correspondence).

In this instance the Council considers that there is a compelling case in the public interest for compulsory acquisition of the Order Land that should outweigh such rights, and therefore the use of compulsory purchase powers in this matter is proportionate. Without the use of these powers it is possible that all of the land necessary to deliver the scheme may not be available within a reasonable timescale, which would compromise the delivery of the junction improvement and the extensive benefits for both travellers and the local community that the scheme provides.

#### **7.6. TRADE UNION**

There are no Trade Union implications arising from this report.

#### **7.7. WARD IMPLICATIONS**

Members and the local community will be consulted as the scheme reaches appropriate stages of development.

Where the Council has been able to identify individual property owners it has made contact directly prior to the preparation of this report. Where this has not been possible (due to failure to identify property owner details) letter drops to individual properties have been made advising of the Council’s intentions in relation to this scheme and seeking commencement of negotiations.

#### **8. NOT FOR PUBLICATION DOCUMENTS**

None.

## **9. OPTIONS**

- 9.1. Executive could decide to continue to seek to negotiate the purchase of interests within the area that is the subject of the proposed Compulsory Purchase order without recourse to compulsory acquisition. Although the negotiations will continue, it may not be possible to reach agreements with all parties concerned within a timescale that fits in with the programme for the scheme, or to reach any agreement at all. The consequence would be that the scheme would be delayed, which would put the WY+TF commitment at risk or that it may not be possible to deliver the scheme at all.

## **10. RECOMMENDATIONS**

- 10.1. That the Executive resolve as follows:-

- a) To approve the promotion of a Side Roads Order (City of Bradford Metropolitan District Council (A650 Hard Ings Road Improvement, Keighley) (Side Roads) Order 2016 using the Council's Powers under sections 14 and 125 of the Highways Act 1980 and all other powers enabling it in that behalf.
- b) To approve the promotion of a Side Roads Order (City of Bradford Metropolitan District Council (Harrogate Road / New Line junction improvements) (Side Roads) Order 2016 using the Council's Powers under sections 14 and 125 of the Highways Act 1980 and all other powers enabling it in that behalf.
- c) That as appropriate the Compulsory Purchase Orders entitled Compulsory Purchase Order (Harrogate Road / New Line Junction Improvement Scheme) 2016 and Compulsory Purchase Order (A650 Hard Ings Road Improvement Scheme, Keighley) 2016 be made under Section 239, 240, 246, 250, 260 and any other relevant provision of the Highways Act 1980 and the Acquisition of Land Act 1981

- 1.2. Note that in the meantime continuing efforts are being made to acquire the land by agreement on all WY+TF projects to allow the improvements to be progressed.

## **11. APPENDICES**

- 11.1. None.

## **12. BACKGROUND DOCUMENTS**

- 12.1. Highways Act 1980
- 12.2. Road Traffic Regulations Act 1984
- 12.3. Acquisition of Land Act 1981
- 12.4. The Department of Transport Local Authority Circular 2/97
- 12.5. Department for Communities and Local Government – Guidance on Compulsory

Purchase process and the Chrichel Down Rules for the disposal of surplus land acquired by, or under threat of compulsion.

- 12.6. Report to Executive 1 December 2015 - West Yorkshire+ Transport Fund – Harrogate Road / New Line Junction Improvement Update and Compulsory Purchase Order (Highways Act 1980)
- 12.7. Report to Executive 12 January 2016 – West Yorkshire+ Transport Fund – A650 Hard Ings Road Improvement, Keighley – Compulsory Purchase Order (Highways Act 1980)