

CABINET

17 JANUARY 2017

A289 FOUR ELMS TO MEDWAY TUNNEL HIGHWAY PROJECT: ACQUISITION OF LAND AND CPO

Portfolio Holder: Councillor Phil Filmer, Front Line Services
Councillor Rodney Chambers OBE, Inward Investment, Strategic Regeneration and Partnerships

Report from: Richard Hicks, Director of Regeneration, Culture, Environment and Transformation

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Summary

This Report seeks authority for the acquisition of the required land and for preparatory works to be carried out with a view to the use of CPO powers should acquisition by agreement not be possible.

1. Budget and Policy Framework

- 1.1 Delivery of the A289 Four Elms to Medway Tunnel Highway Project ('the project') can be met from with existing budgets, specifically the Local Growth Fund and S106 contributions.
- 1.2 The limit of authority for the Chief Executive and Directors to acquire land is— up to £100,000. Acquisitions and disposals above this value are a matter for the Cabinet.
- 1.3 The making of Compulsory Purchase Orders is a matter for the Cabinet.

2. Background

- 2.1 This report concerns the proposed improvements to the A289; the extent is shown edged red on the attached plan, Appendix 1.
- 2.2 The proposed improvements affect the at-grade roundabouts of:
 - i. Four Elms – (A289 Hasted Road/A228 Four Elms Hill);
 - ii. Sans Pareil – (A289 Wulfere Way/A228 Frindsbury Hill); and
 - iii. Anthony's Way – (A289 Berwick Way/A289 Vanguard Way tunnel).

- 2.3 These roundabouts presently experience queuing and delays resulting in unreliable journey times and operational delays to businesses on the Medway City Estate. Without intervention, strategic transport modelling demonstrates this link will become more congested in future years which will have a further negative impact on existing and planned housing and employment sites.
- 2.4 The scheme therefore is intended to address these issues. There are four key objectives:
- i. Improve operation of A289 corridor;
 - ii. Ensure minor side roads operate effectively, with acceptable traffic capacity and minimal delay;
 - iii. Provide a transport system which can aid delivery of the Local Transport Plan and emerging Local Plan; and
 - iv. Promote sustainable agenda.
- 2.5 The business case considered a number of different options to improve this section of the A289 ranging from 'do nothing' to 'do maximum.'
- 2.6 Based on an assessment against these objectives and a series of success factors including deliverability the recommended option was to proceed with enlarging the existing three roundabouts.
- 2.7 The Council submitted an outline planning application on 7 October 2016 (reference: MC/16/4154) and determination of the application is expected early in 2017.
- 2.8 Designs for A289 Four Elms Roundabout to Medway Tunnel are developed to Royal Institute of British Architects (RIBA) stage 3, Appendix 1. The detailed design will commence in January 2017 and are expected to be completed by Spring/Summer 2017.

Land Ownership

- 2.9 To deliver the proposed project, acquisition of third party land is required.
- 2.10 The outline design indicates that the land required is held under 8 freeholds and 2 leaseholds, not including Medway Council as shown in the exempt appendix.
- 2.11 To date the Project Manager has engaged in introductory discussions with the landowners and a surveyor is to be appointed imminently to provide valuation advice and lead on negotiations on behalf of the Council should this be agreed.
- 2.12 It would be more likely that the project would be realised with intervention by the Council, as such in parallel with negotiations the council may promote a compulsory purchase order (CPO) to allow the delivery of the project within a reasonable timeframe.

- 2.13 The Council has powers under the Highways Act 1980 to acquire land and rights for the purpose of improving highways and carrying out associated works.
- 2.14 If negotiation to acquire the land by private treaty, at a reasonable cost and within a reasonable timeframe is not successful, the Council could use these powers of compulsory purchase to acquire the interests in the site within a reasonable timeframe.
- 2.15 This report seeks authority for the acquisition of the required land and for preparatory works to be carried out with a view to the use of CPO powers should acquisition by agreement not be possible.

3. Options

- 3.1 Option 1 – Negotiate with third parties in parallel to preparing CPO
- 3.1.1 Continue to prepare the detailed design.
- 3.1.2 Negotiate with landowners and authorise officers to conclude negotiations, where possible agreeing compensation for acquisition of interests by private treaty.
- 3.1.3 Seek advice on the compulsory purchase process and undertake preparatory works to include:
- i. Land referencing (including service of formal requisitions for information); and
 - ii. Preparation of drafts of the Statement of Reasons, Order Map and Schedule.
- 3.1.4 Seek further resolution to use compulsory purchase powers should negotiations fail to reach a successful conclusion.
- 3.1.5 The main advantage of this option is that reliance on compulsory purchase powers should negotiations fail, will allow the project to proceed within a reasonable timeframe. The benefits of the project outlined section 2 will also be realised.
- 3.1.6 The main disadvantage of this option is that it is the most expensive option.
- 3.2 Option 2 – Continue negotiations only
- 3.2.1 Continue to prepare the detailed design.
- 3.2.2 Negotiate with landowners to seek to acquire their interests by private treaty alone, without also considering the use of compulsory purchase powers if those negotiations are not successful.
- 3.2.3 This option would avoid significant cost from the promotion of a compulsory purchase order, however negotiations may not be successful and the project may not proceed in a reasonable timeframe, leading to loss of funding and delay whilst further funding is sourced.

4. Advice and analysis

4.1 For reasons set out in this report the project will generate significant benefits.

4.2 Option 1 is recommended on the basis that:

- i. The spend profile is agreed with the SELEP and funding should be spent by the end of the 2018/19 financial year, the anticipated construction start date is late 2017;
- ii. Detailed design consultants are expected to be appointed in January 2017 and will identify the exact land take required for the project.
- iii. Third party land will need to be acquired;
- iv. In order to achieve the programme negotiations should be held with the landowners but it may be necessary to use the Council's CPO powers if an agreement can't be reached at a reasonable cost and in a reasonable timeframe;

4.3 Before a CPO can be made there is a need to carry out land referencing to ensure that all land interests are captured. It is recommended that these preparatory works be commenced now in case CPO becomes necessary.

4.4 It is also necessary for formal authority to be given for acquisition by agreement.

5. Risk management

Risk	Description	Action to avoid or mitigate risk	Risk rating
Negotiating with landowners without success	Negotiations with landowners without the support of compulsory acquisition powers may delay the programme and make the project unrealisable.	Continue with detailed design and complete preparatory works in the event CPO becomes necessary.	B2
Loss of funding	If agreement cannot be reached with the landowners at a reasonable cost and in a reasonable timeframe it may lead to a loss of grant funding from the SELEP and require pay back of that which is already spent.	Review the spend profile against programme and agree an extension with the SELEP.	C3

Risk	Description	Action to avoid or mitigate risk	Risk rating
Complete alteration to the design	Designs for the project are developed to RIBA stage 3. RIBA stage 4 (Technical design) is required to understand the full extent of land to be acquired and enable construction.	The detailed design consultants will undertake an initial review of the outline proposals as a priority task, officers can then seek advice from appointed surveyors and legal advisors	D3

6. Consultation

6.1 Consultation has been undertaken with the SELEP, internally with property teams and with external legal advisors.

7. Financial implications

7.1 Medway Council has received a contribution of £11.1m grant funding from the Local Growth Fund to be spent on the A289 Four Elms to Medway Tunnel Highway Project ('the project').

7.2 In accordance with the spend profile agreed with the South East Local Enterprise Partnership (SELEP) this funding should be spent by the end of the 2018/19 financial year.

7.3 This funding has been secured on the condition that the money is spent delivering a capital project, as detailed in the SELEP approved business case submitted in 2015.

7.4 The funding allocation also includes S106 contributions.

7.5 The project is required to deliver the key outcomes specified in the business case, for example, a reduction in congestion. The SELEP will closely monitor both spend and progress throughout the life of the project.

7.6 The costs of acquiring the land and undertaking the CPO works should this be agreed have been budgeted for within the LGF spend profile. This is monitored monthly by Council Officers and reviewed quarterly by the SELEP at the Accountability Board Meeting.

8. Legal implications

8.1 A compulsory purchase is a legal function that allows certain public bodies to acquire land, for a specific purpose, if the landowner is not willing to sell by agreement. It might be possible to acquire land for small-scale projects by agreement; site assembly for major schemes will usually mean the parties need to consider using compulsory powers. The Council, and its professional advisers, will want the assurance that the project can be completed without undue delay and without being held to ransom by owners seeking to maximise value unreasonably and being unwilling to sell. Compulsory powers

also have the further advantages that the price paid will be in accordance with the statutory compensation code and disputes over that price will not hold up entry or acquiring ownership of the land.

- 8.2 Pursuing option 1: to negotiate with third parties in parallel to preparing CPO will give the Council more certainty in relation to its ability to deliver the project. However care should be taken to ensure that the ancillary contracts for the provision of different aspects of the whole project are aligned to ensure that professionals engaged to assist the Council in this project are doing so timely, efficiently and cost effectively.
- 8.3 There are a number of statutory powers available to local authorities wishing to compulsorily purchase land. These powers often overlap so that an acquiring authority has a choice of powers to compulsorily purchase land. The Chief Legal Officer will be able to choose the most appropriate power in the circumstances if a CPO is required.

9. Recommendations

- 9.1 The Cabinet is asked to agree to delegate authority to the Chief Legal Officer, in consultation with the Portfolio Holders for Front Line Services and Inward Investment, Strategic Regeneration and Partnerships, to acquire interests in land needed for the A289 Four Elms to Medway Tunnel scheme by agreement and to pay any subsequent compensation.
- 9.2 The Cabinet is asked to agree to delegate authority to the Chief Legal officer, in consultation with the Portfolio Holders for Front Line Services and Inward Investment, Strategic Regeneration and Partnerships, to carry out preparatory works for use of Compulsory Purchase Order (CPO) powers to include land referencing (including service of formal requisitions for information), and preparation of drafts of the Statement of Reasons, Order Map and Schedule.
- 9.3 The Cabinet is asked to delegate to the Chief Legal Officer in principle, the decision to use its CPO powers to facilitate delivery of the scheme in the event that acquisition by agreement is not reasonably practicable.
- 9.4 The Cabinet is asked to agree that officers be instructed to submit a report back to Cabinet to report on the use of any formal CPO powers delegated to the Chief Legal Officer in the event that all the land cannot be secured by agreement.

10. Suggested reasons for decision(s)

- 10.1 To facilitate the delivery of this important highways scheme to meet the objective outlined in the approved business case.

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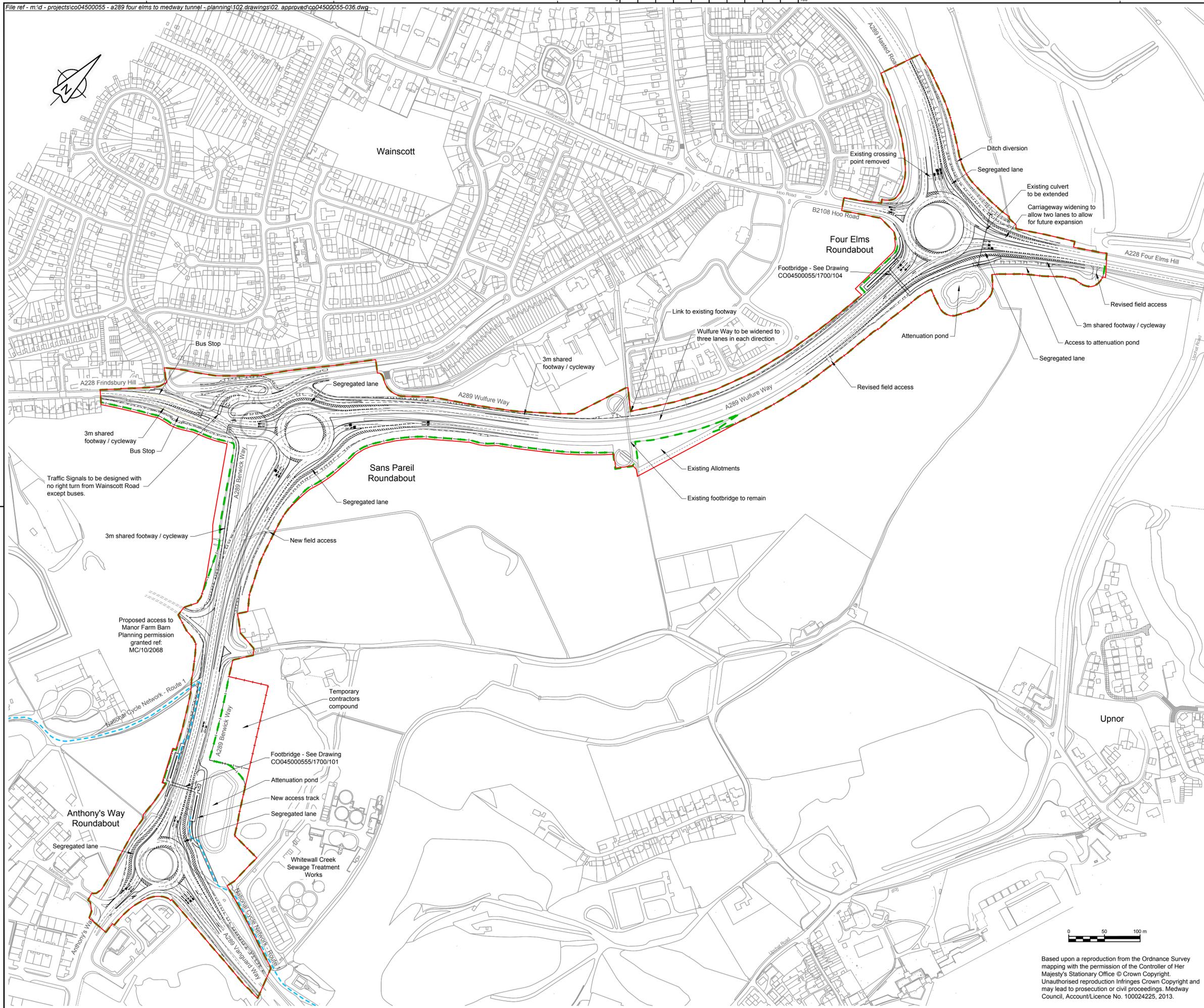
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Appendices

Appendix 1 – Red Line Boundary and outline scheme design
Exempt Appendix

Background papers

None



KEY

- Land Boundary
- Final Boundary of Scheme

APPENDIX 1

05	Scheme boundary and planning boundary amended.	NF	JMN	05/10/16
04	Compounds and access to Anthony's Way attenuation pond amended. Planning boundary amended.	NF	JMN	04/10/16
03	Notes amended.	CB	NF	23/09/16
02	Drawing title changed. Drawing status changed.	BDB	NF	22/09/16
01	Proposed Scheme updated; Scheme Boundary added.	NF	NF	20/09/16
Rev	Revision details	Chkd	Appd	Date

Designed:	BDB	Date:	18.08.16
Drawn:	JT	Date:	18.08.16
Checked:	JMN	Date:	18.08.16
Approved:	JMN	Date:	18.08.16



Project Name
A289 Four Elms Roundabout to Medway Tunnel Improvements

Drawing Title
Scheme Layout with Planning Red Line Superimposed

Original Drawing Size:	A1	Scale:	1:2500@A1
Dimensions:	-		

Drawing Status
FOR PLANNING

Suitability
S0

Drawing No
CO04500055/036

Rev
05

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