

CABINET

28 SEPTEMBER 2021

ACQUISITION OF LAND INTERESTS HOUSING INFRASTRUCTURE FUND: NEW ROUTES TO GOOD GROWTH

Portfolio Holder: Councillor Alan Jarrett, Leader of the Council

Report from: Richard Hicks, Director of Place and Deputy Chief Executive

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Summary

This report seeks delegated authority to Director of Place and Deputy Chief Executive in consultation with the Chief Finance Officer and with the Leader of the Council, to authorise acquisitions of Land and Interests in connection with the Housing Infrastructure Fund (HIF): New Routes to Good Growth Project. Advance purchase or options to purchase the required land will enable the construction of the new road, rail infrastructure and strategic environmental management scheme (SEMS) projects to come forward and lessen reliance or negate the need for compulsory purchase powers in the future.

1. Budget and policy framework

1.1. The decisions in this report are within the Council's policy and budget framework and are for Cabinet determination.

1.2. The Acquisition programme has been approved by Homes England within the £170 million grant. This is in line with the budget framework previously set out in the Grant Determination Agreement.

2. Background

2.1. Medway Council were successful in their bid to the Ministry of Housing, Communities and Local Government (MHCLG) for the HIF New Routes to Good Growth project. The scheme aims to unlock new development on the Hoo Peninsula of up to 12,100 new homes by 2043, and to strengthen the area's economy through development of commercial space at Kingsnorth and Grain.

- 2.2. In July 2020 the £170m HIF Grant Determination Agreement (GDA) was signed by both MHCLG and the Council.
- 2.3. The New Routes to Good Growth Project comprises three interrelated projects - Road, Rail and Strategic Environmental Management Scheme (SEMS).
- 2.4. To enable delivery of the three projects several land interests must be acquired. At its meeting on 9 June 2020 the Cabinet agreed in principle to use its compulsory acquisition powers should it be necessary (decision number 64/2020).
- 2.5. Accompanying that decision in the exempt from publication appendix was a compulsory acquisition strategy which set out the high-level strategy for acquiring the interests required for the scheme.
- 2.6. In that report it was highlighted that the Council must demonstrate that it has taken all reasonable steps to acquire the land and rights required for the scheme by agreement before making a Compulsory Purchase Order (CPO). Compulsory acquisition must be a last resort.
- 2.7. However, the two processes of negotiation and preparation for a CPO can be done in parallel to avoid delays to projects.
- 2.8. If compulsory purchase is required a future decision by the Cabinet will be required to authorise the making of a Compulsory Purchase Order(s).
- 2.9. In order to progress the project in a timely manner this report seeks an agreement by Cabinet to grant delegated authority to the Director of Place and Deputy Chief Executive in consultation with the Chief Finance Officer and the Leader of the Council to enter into legally binding agreements with landowners to purchase the required land and interests.
- 2.10. Whilst Delegated Authority already exists for transactions under £100,000 the aggregate value of the transactions exceeds this and therefore this is considered a Key Decision for Cabinet.
- 2.11. The design process for the three projects is at an advanced stage and the majority of the land parcels and interests required have now been identified.
- 2.12. The intention is, where possible, to enter into conditional agreements exercisable on an implementable consent for the scheme in question.
- 2.13. Some of the land interests are small parcels, resulting in it being more cost effective for the Council to purchase the land outright in advance of the schemes being authorised. In the unlikely event that this land is not required it can be offered back to the original owner at Market Value.
- 2.14. All purchases or options will include compensation in line with the 'Compensation Code' equivalent to what the seller would have been paid had they been compulsorily acquired ensuring no party is better off waiting for a CPO.

- 2.15. The current identified land to be acquired is set out in Appendix 1 (exempt from publication). With a budget estimate for each interest. It must be noted that this represents the current identified land required and may be subject to change on further consultation / design refinement. The values are also based on a desktop basis as no negotiations have taken place as at the time of publication.
- 2.16. Officers will only authorise agreements where the Design team and the Director of Place and Deputy Chief Executive (in consultation with the Chief Finance Officer and the Leader of the Council) are satisfied that the design options have been exhausted and that the land acquisition is unlikely to change.

3. Options

- 3.1. Option 1 - Attempt to negotiate and bring all decisions back to Cabinet for approval individually. It is to be noted that this option will cause delays to the acquisition programme and the consenting programme.
- 3.2. Option 2 - Delegated authority is given to the Director of Place and Deputy Chief Executive, in consultation with the Chief Finance Officer and the Leader of the Council, to authorise the entering into of Option Agreements to purchase or outright purchase (where cost effective) land and interests. **This is the recommended option.**

4. Advice and analysis

- 4.1. The purchase of land and interests for the project is required.
- 4.2. Purchasing the required land and interests will de-risk the scheme, mitigate costs and satisfy CPO guidance.
- 4.3. Failure to make meaningful negotiations, even if unsuccessful, will put future compulsory acquisition at risk of failure.
- 4.4. The road project is to be completed in stages and some stages may be able to come forward early if specific acquisitions are made.
- 4.5. There are currently approximately 62 interests to be acquired outside of the Hoo Consortium (which will be acquired subject to a separate agreement) to enable the Road and Rail projects. The current budget estimate is set out in Appendix 1 and is covered by funding from the HIF.
- 4.6. Acquisition of the land required for SEMS will be included under the Consortium agreement and with Homes England, however individual agreements may need to be entered into to enable early works to commence.
- 4.7. Bringing back decisions to Cabinet to purchase the required land and interests or to enter into option agreements is not considered optimal because:
 - 4.7.1. Excessively time consuming for members and officers

4.7.2. Ability to contract quickly is key to concluding negotiations (frequency lead in times and scheduling of meetings are all issues)

4.7.3. A majority of small transactions are required as set out in Appendix 1.

4.8. It has been identified that phases 3,4,5 of the proposed Road scheme could come forward early if interests are acquired. These will be prioritised.

5. Risk management

5.1. The following table considers the significant risks arising from this report.

Risk	Description	Action to avoid or mitigate risk	Risk rating
Land Purchased not required	If the scheme changes or is cancelled, then land will not be required.	Option agreements conditional on implementable consent to be used wherever possible / cost effective. This will mitigate cost risk however option fees will not be recoverable. Any land not required for the scheme may be sold back to original owner at market value. (Crichel Down rules)	D3
Scheme design changes requiring more land	If the scheme changes and more land is required than already negotiated under an option.	Agreements will only be entered into where design is at a settled point and all other options have been explored. The project designers have identified the maximum extent required where design is not settled and forms part of the estimate.	C2
Delays to authorising acquisitions	If authorisation is not delegated acquisitions may be delayed significantly impacting on the wider timeline for the project. Landowners may get "cold feet" in the interim period between agreement and authorisation or not enter into negotiations at all.	Granting the delegated authority will enable the Council to enter into agreements promptly.	A2

Risk	Description	Action to avoid or mitigate risk	Risk rating
<p>Level of compensation exceeds budget</p>	<p>The Council's advisers have undertaken a 'desktop' appraisal for all land and interests required together with the compensation that would be due under compulsory acquisition Property Cost Estimate (PCE). Further due diligence or timing of the acquisitions may reveal or cause changes to the compensation.</p> <p>Although detailed land referencing has taken place further interests may be identified through contact referencing.</p> <p>Any changes to the assumption to the current PCE will lead to a change in the final total figure, it is to be noted that if land values in the area increase it could potentially increase costs.</p> <p>The current PCE is a live document and is likely to change as negotiations commence with landowners.</p> <p>Given the 'high level' nature of this exercise and the sources of information available, individual line entries may be subject to variation.</p>	<p>The Property Cost Estimate includes a 10% contingency.</p> <p>Acquisitions will be executed wherever possible to minimise disturbance such as crop damage where possible.</p> <p>The Council's advisers will ensure that fair compensation is justifiable and will be agreed in line with the compensation code.</p>	<p>C3</p>

6. Financial implications

- 6.1. This report refers to the acquisition of land and interests in connection with the road and rail components of the Housing Infrastructure Fund project. SEMS land acquisitions have been excluded, as all landowners are part of the Hoo Consortium and as a result no compensation would be payable.

- 6.2. The property cost estimate represents the worst case scenario for both road and rail, based on a number of assumptions and exclusions. In the event that the consortium fails, it is assumed that betterment will render any compensation claim under the compensation code to be nil. If the consortium agreement changes in nature, whereby the landowners may be entitled to a compensation claim, the property cost estimate will need to be amended to reflect this.
- 6.3. The property cost estimate for both road and rail acquisitions is attached as an exempt appendix. It demonstrates that we are well within the £10 million pound acquisition budget, as part of the overall £170m grant funding for this project and retains a significant and sufficient provision to cover the Council's costs for legal and property consultancy, should we need to go to CPO.

7. Legal implications

- 7.1. The decision to exercise CPO powers is one for Cabinet. The power to Compulsorily Purchase land for local authorities is contained in the main within the Town and County Planning Act 1990, although there are other powers available should the land be required for more than one purpose such as that set out within S121 of the Local Government Act 1972.
- 7.2. The exercise of powers is largely governed by a procedure known as the Crichel Down rules, which the Council will need to follow should any order be necessary. It is hoped that the majority of acquisitions can be achieved through negotiation rather than via a CPO.
- 7.3. The proposed delegation set out in paragraph 3.2 of the report will be required until all land is acquired to enable the delivery of the project. Section 100(G) of the Local Government (Access to Information) Act 1985 specifies that any delegations required to be in place for a period greater than six months shall be included in the Council's Employee Scheme of Delegation. The Leader of the Council can agree the addition of delegations in relation to executive functions, as set out in paragraph 1.4(b) of the Leader and Cabinet rules set out in the Constitution.

8. Recommendation

- 8.1. The Cabinet is requested to grant delegated authority to the Director of Place and Deputy Chief Executive, in consultation with the Chief Finance Officer and the Leader of the Council, to authorise the acquisition of Land and Interests in connection with the Housing Infrastructure Fund: New Routes to Good Growth Project.

9. Suggested reasons for decision

- 9.1. Having the delegation in place will enable timely acquisition of interests, minimise delays to the project and avoid the Council needing to use its compulsory acquisition powers.

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Appendices

Exempt Appendix 1 – Property Cost Estimate

Background papers

None