

WRITTEN STATEMENT OF A KEY DECISION CABINET MEMBER HIGHWAYS & TRANSPORTATION

ITEM:	YAZOR BROOK FLOOD ALLEVIATION SCHEME COMPULSORY PURCHASE ORDER
Date of Decision:	1 October 2009
Exempt:	No
Confidential	No
This is a key decision because It is significant in terms of its effect on communities living or working in Herefordshire in an area comprising one or more wards	
The item was included in the Forward Plan.	
Urgency/Special Urgency: (As defined in Constitution)	No
Purpose:	<p>To seek approval for the selection of the preferred option for the Yazor Brook Flood Alleviation Scheme and, to enter into an appropriate procurement process for the letting of the Scheme construction contract.</p> <p>The Yazor Brook Flood Alleviation Scheme is required to alleviate the risks of flooding within the city of Hereford to public infrastructure and both public and private properties within the existing Yazor/Widemarsh Brooks floodplains, and to facilitate the implementation of proposals for the regeneration of the area known as the Edgar Street Grid, a plan of which is attached as Appendix 1.</p> <p>Additionally, to seek approval for the making of the County of Herefordshire District Council (Yazor Brook Flood Alleviation Scheme) Compulsory Purchase Order 2009 (the Order), if required, for the acquisition of land, easements and rights of access over land for a flood alleviation scheme to divert floodwaters by culvert from the Yazor Brook at Credenhill to the River Wye.</p>
Decision:	<p>THAT:</p> <p>(a) The Yazor Brook Flood Alleviation Scheme (Option A from Capita Symonds - Flood Alleviation Scheme Options Report – Appendix 2) as the preferred Option for the ESG Flood Alleviation Scheme be approved</p> <p>(b) The Assistant Chief Executive – Legal and</p>

	<p>Democratic (or replacement postholder)) be authorised to arrange for the making of the County of Herefordshire District Council (Yazor Brook Flood Alleviation Scheme) Compulsory Purchase Order 2009 under s226(1)(a) of the Town and Country Planning Act 1990 and section 13 of the Local Government (Miscellaneous Provisions) Act 1976 and the Acquisition of Land Act 1981 for the acquisition of the land and the acquisition of the new rights within the areas coloured pink and blue respectively shown on the draft plan attached at Appendix 3, (subject to any final amendments of the Plan the Director of Regeneration considers necessary).</p> <p>(c) The Assistant Chief Executive – Legal and Democratic (or replacement postholder), in liaison with the Director of Regeneration be authorised to implement the Order, including the acquisition of all necessary land and interests and new rights.</p> <p>(d) The Director of Regeneration be authorised to procure and, subject to confirmation of funding, let the construction contract for the Yazor Brook Flood Alleviation Scheme and to take all necessary steps to proceed with the scheme implementation.</p>
<p>Reasons for the Decision:</p>	<p>1 Flood alleviation works are needed to alleviate the risks of flooding within the city of Hereford to public infrastructure and both public and private properties within the existing Yazor/Widemarsh Brooks floodplains and to enable the wider redevelopment of the ESG scheme by allowing the construction of the Link Road and the redevelopment of an existing flood plain within the ESG Area.</p> <p>2 The preferred flood alleviation option is for a scheme to divert flood waters at a point south of Credenhill, through agricultural land, discharging into the River Wye near to Weir Cliff. The preferred option has been chosen following a comprehensive evaluation conducted by Capita Symonds on behalf of ESG Herefordshire and Herefordshire Council. The recommendations of this report are based on the ESG Master Programme, Strategic reduction of flood risk within the ESG area, the ability of an option to benefit flooding which arises from events more extreme than the design event, Environmental appraisal, Risk, and Cost.</p> <p>3 The Council is currently negotiating the acquisition of land, easements, rights over land, and rights of access by agreement to enable the flood alleviation works to progress. However the negotiations have been inconclusive to date and it is for the Council to use its powers of Compulsory Purchase to enable the Council to</p>

	<p>acquire the land and interests needed to progress the flood alleviation works needed for the ESG scheme.</p> <p>4 To enable the ESG Flood Alleviation Scheme to proceed within the agreed ESG development plan timescales, it is necessary to commence, in October 2009, a procurement process for the construction contract to build the scheme. Commencement of this process will allow the Council to tender for the construction element of the scheme and will cumulate in the letting of this contract.</p>
<p>Options Considered:</p>	<p>5 Alternative Options for the ESG Flood Alleviation Scheme (FAS)</p> <p>A number of alternative options were considered by ESG Herefordshire Ltd for the FAS. The full examination of the various options is included at Appendix 2.</p> <p>6 Alternative options to the implementation of a Compulsory Purchase Order.</p> <p>That acquisition of the necessary land and rights of access are concluded by a negotiated agreement and a CPO process is not initiated. Negotiations are currently ongoing between ESG, Herefordshire Council and the various landowners with interests in the line of the Scheme. Although these negotiations have been ongoing for a number of months it is considered feasible that at some future point a negotiated agreement could still be reached.</p> <p>The alternative option is therefore to continue to pursue a negotiated agreement rather than promote a Compulsory Purchase Order.</p> <p>Advantages of negotiated agreement</p> <ol style="list-style-type: none"> 1. Would negate the need to make a CPO and the possibility of holding a CPO Public Inquiry. <p>Disadvantages of negotiated agreement</p> <ol style="list-style-type: none"> 1. There would be no certainty over timescales for conclusion of an agreement. 2. There would be no certainty of reaching an agreement and being able to acquire the required land and access rights. 3. There would be an associated risk of cost increases to facilitate a negotiated conclusion. <p>This alternative option is rejected for the reasons listed above under disadvantages of negotiated agreement, although in line with the guidance set out in ODPM Circular 06/2004, the Council, and ESG on behalf of the</p>

	Council, will continue to try and negotiate the acquisition of the necessary land and rights by agreement if the Order is made.
Declaration of Interest:	
Date the key decision is due to take effect:	7 October 2009

COUNCILLOR DB WILCOXDate: 1 October 2009 Cabinet Member Highways & Transportation
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To be completed by officer:	
Date consent received from Chairman of Environment Scrutiny Committee:	No response received
Subject to Call-in:	This Decision was not called in
Was the decision modified?	No
If yes Cabinet Member (.....) decision reference:	Not applicable
If no any comment(s) to be noted	Not applicable
Date original decision took effect:	7 October 2009

YAZOR BROOK FLOOD ALLEVIATION SCHEME COMPULSORY PURCHASE ORDER

REPORT BY DIRECTOR OF REGENERATION

REPORT TO CABINET MEMBER FOR HIGHWAYS AND TRANSPORTATION

DATE REPORT CONSIDERED AND DECIDED BY CABINET MEMBER: 1 OCTOBER 2009

DATE DECISION CAN BE IMPLEMENTED: 7 OCTOBER 2009

CLASSIFICATION: Open

Wards Affected

Aylestone Ward

Burghill, Holmer and Lyde Ward

Central Ward

Credenhill Ward

Three Elms Ward

Tupsley Ward

Purpose

To seek approval for the selection of the preferred option for the Yazor Brook Flood Alleviation Scheme and, to enter into an appropriate procurement process for the letting of the Scheme construction contract.

The Yazor Brook Flood Alleviation Scheme is required to alleviate the risks of flooding within the city of Hereford to public infrastructure and both public and private properties within the existing Yazor/Widemarsh Brooks floodplains, and to facilitate the implementation of proposals for the regeneration of the area known as the Edgar Street Grid, a plan of which is attached as Appendix 1.

Additionally, to seek approval for the making of the County of Herefordshire District Council (Yazor Brook Flood Alleviation Scheme) Compulsory Purchase Order 2009 (the Order), if required, for the acquisition of land, easements and rights of access over land for a flood alleviation scheme to divert floodwaters by culvert from the Yazor Brook at Credenhill to the River Wye.

Key Decision

This is a Key Decision because it is likely to be significant in terms of its effect on communities living or working in Herefordshire in an area comprising one or more wards.

It was included in the Forward Plan.

Recommendation

THAT THE CABINET MEMBER:

(a) Approves the Yazor Brook Flood Alleviation Scheme (Option A from Capita

Symonds - Flood Alleviation Scheme Options Report – Appendix 2) as the preferred Option for the ESG Flood Alleviation Scheme.

- (b) Agrees that the Assistant Chief Executive – Legal and Democratic (or replacement postholder)) be authorised to arrange for the making of the County of Herefordshire District Council (Yazor Brook Flood Alleviation Scheme) Compulsory Purchase Order 2009 under s226(1)(a) of the Town and Country Planning Act 1990 and section 13 of the Local Government (Miscellaneous Provisions) Act 1976 and the Acquisition of Land Act 1981 for the acquisition of the land and the acquisition of the new rights within the areas coloured pink and blue respectively shown on the draft plan attached at Appendix 3, (subject to any final amendments of the Plan the Director of Regeneration considers necessary).**
- (c) Authorises the Assistant Chief Executive – Legal and Democratic (or replacement postholder), in liaison with the Director of Regeneration to implement the Order, including the acquisition of all necessary land and interests and new rights.**
- (d) Authorises the Director of Regeneration to procure and, subject to confirmation of funding, let the construction contract for the Yazor Brook Flood Alleviation Scheme and to take all necessary steps to proceed with the scheme implementation.**

Key Points Summary

- Requirement to alleviate flooding affecting the ESG area and existing city and infrastructure.
- Options appraisal carried out by ESG Herefordshire Ltd for flood alleviation, preferred solution identified, diversion of the Yazor Brook, in times of flood, to the River Wye.
- Negotiations with landowners are ongoing for the necessary land and access rights, however a Compulsory Purchase Order is now required to provide certainty of delivery.
- A planning application for the preferred scheme has been submitted to the Local Planning Authority, and a funding application has been submitted to Advantage West Midlands for the acquisition and construction costs.
- A procurement process for the construction contract will be undertaken and, subject to the confirmation of funding, a contractor appointed to build the Flood Alleviation Scheme.

Alternative Options

1 Alternative Options for the ESG Flood Alleviation Scheme (FAS)

A number of alternative options were considered by ESG Herefordshire Ltd for the FAS. The full examination of the various options is included at Appendix 2.

2 Alternative options to the implementation of a Compulsory Purchase Order.

That acquisition of the necessary land and rights of access are concluded by a negotiated agreement and a CPO process is not initiated. Negotiations are currently ongoing between ESG, Herefordshire Council and the various landowners with interests in the line of the

Scheme. Although these negotiations have been ongoing for a number of months it is considered feasible that at some future point a negotiated agreement could still be reached.

The alternative option is therefore to continue to pursue a negotiated agreement rather than promote a Compulsory Purchase Order.

Advantages of negotiated agreement

1. Would negate the need to make a CPO and the possibility of holding a CPO Public Inquiry.

Disadvantages of negotiated agreement

1. There would be no certainty over timescales for conclusion of an agreement.
2. There would be no certainty of reaching an agreement and being able to acquire the required land and access rights.
3. There would be an associated risk of cost increases to facilitate a negotiated conclusion.

This alternative option is rejected for the reasons listed above under disadvantages of negotiated agreement, although in line with the guidance set out in ODPM Circular 06/2004, the Council, and ESG on behalf of the Council, will continue to try and negotiate the acquisition of the necessary land and rights by agreement if the Order is made.

Reasons for Recommendations

- 3 Flood alleviation works are needed to alleviate the risks of flooding within the city of Hereford to public infrastructure and both public and private properties within the existing Yazor/Widemarsh Brooks floodplains and to enable the wider redevelopment of the ESG scheme by allowing the construction of the Link Road and the redevelopment of an existing flood plain within the ESG Area.
- 4 The preferred flood alleviation option is for a scheme to divert flood waters at a point south of Credenhill, through agricultural land, discharging into the River Wye near to Weir Cliff. The preferred option has been chosen following a comprehensive evaluation conducted by Capita Symonds on behalf of ESG Herefordshire and Herefordshire Council. The recommendations of this report are based on the ESG Master Programme, Strategic reduction of flood risk within the ESG area, the ability of an option to benefit flooding which arises from events more extreme than the design event, Environmental appraisal, Risk, and Cost.
- 5 The Council is currently negotiating the acquisition of land, easements, rights over land, and rights of access by agreement to enable the flood alleviation works to progress. However the negotiations have been inconclusive to date and it is for the Council to use its powers of Compulsory Purchase to enable the Council to acquire the land and interests needed to progress the flood alleviation works needed for the ESG scheme.
- 6 To enable the ESG Flood Alleviation Scheme to proceed within the agreed ESG development plan timescales, it is necessary to commence, in October 2009, a procurement process for the construction contract to build the scheme. Commencement of this process will allow the Council to tender for the construction element of the scheme and will cumulate in the letting of this contract.

Introduction and Background

- 7 The implementation of the ESG scheme will require substantial preliminary infrastructure including flood alleviation measures needed to reduce the risk of flooding of major areas of the

ESG site from the Widemarsh Brook, which flows from a bifurcation with Yazor Brook.

- 8 ESG Herefordshire Ltd, in consultation with the Environment Agency has fully appraised flood alleviation solutions. The preferred approach is for the construction of culverts and watercourses for the diversion of flood waters, and the Council would need to have the right to gain access for the future maintenance of these culverts and watercourses and for the construction of the scheme. A draft map showing the location of the necessary land and rights is attached at Appendix 3.
- 9 The Council via ESG Herefordshire Ltd are negotiating with the appropriate landowners for the necessary land and rights. However in order to guarantee the acquisition of the land, and rights and to secure timescales it is necessary to seek authorisation to make a Compulsory Purchase Order, to be made in tandem with the present negotiations so that the CPO powers can be exercised if there is any failure to reach agreement on the acquisition of any of the required land, and rights.

Key Considerations

- 10 The FAS is a strategic scheme designed to significantly reduce flood risk within Hereford and the ESG Area and elsewhere along the Yazor and Widemarsh Brooks. Together with other on-site measures, the scheme will allow the re-development of land within the ESG Area and mitigate areas of the wider city from flooding. The redevelopment of the ESG Area is provided for within the UDP and the proposed package of projects are considered key to the growth of Hereford's retail and leisure offer, and will make a significant contribution towards Herefordshire's Regional Spatial Strategy housing targets.
- 11 The FAS will divert flood waters from the Yazor Brook by means of an offtake at Credenhill Community Centre, water will then be culverted across land at Magna Castra Farm and neighbouring land owned by the National Trust, to an outflow structure near the River Wye to the south.
- 12 A planning application for the FAS has been submitted to Herefordshire Council and an application has been submitted to Advantage West Midlands for funding of the scheme construction and acquisition of the necessary land, and rights.
- 13 The Council, via ESG Herefordshire Ltd, has been in negotiation with the owners of the land over which the scheme will run for the acquisition of land, rights and easements needed for the flood alleviation scheme. The negotiations with some of the landowners have been inconclusive and are becoming protracted. Any delay in finalising the FAS may delay the wider development of the ESG area.
- 14 The legal powers to be used by the Council for the compulsory acquisition of land and new rights are contained respectively in s226(1)(a) of the Town and Country Planning Act 1990 and s13 of the Local Government (Miscellaneous Provisions) Act 1976 and the Acquisition of Land Act 1981 for the making of the compulsory purchase order.
- 15 Compensation payments made for the acquisition of interests in land and for the acquisition of new rights in land within the compulsory purchase order or acquired outside the compulsory purchase order area to give effect to and/or implement the order are made in accordance with the compulsory purchase compensation code pursuant to legislation, including the Land Compensation Acts 1961-1973 and case law.
- 16 S226(1)(a) Town and Country Planning Act 1990 (as amended) enables the Council (on being authorised by the Secretary of State) to compulsorily acquire any land needed to facilitate the carrying out of the development, redevelopment or improvement of land which is required for

purposes necessary in the interests of the proper planning of its area.

- 17 The Council must also consider that the specified development, redevelopment or improvement will contribute towards the achievement of the promotion or improvement of the economic, social or environmental well being of its area. The procedural requirements of the Acquisition of Land Act 1981 will then apply to the compulsory acquisition, including in relation to the service of the relevant CPO statutory notices and timetable.
- 18 Under section 13 of the Local Government (Miscellaneous Provisions) Act 1976 and the Acquisition of Land Act 1981, the Council as the acquiring authority has the power to acquire compulsorily any rights over land as specified in the Order which are not in existence when the Order is made.
- 19 If the Council agrees the use of its powers of compulsory acquisition, this will not preclude the Council from continuing to try to acquire the necessary rights by agreement.
- 20 This report therefore asks for approval for the Council to make a CPO whilst continuing with its efforts to acquire the land and rights needed to carry out the flood alleviations works by agreement.
- 21 Failure to agree the recommendations of this report could have implications for the implementation of the wider ESG redevelopment proposals. As noted above, without a CPO, there exists no certainty regarding the timescales for negotiating the land and rights necessary to progress the scheme.

Community Impact

- 22 To deliver the ESG development, ESG Herefordshire Ltd, and its partners, is working on several projects to improve the infrastructure. A new road – the Link Road - will take traffic from the inner ring road, allowing the city centre to expand; other highway and transport improvements are proposed in tandem with this investment. Land for the city centre expansion is being made available through the redevelopment of the current Livestock Market site.
- 23 Within the ESG area, significant areas of open land such as Merton meadow and the Police dog training ground are within the floodplain of the Brook and as a result are subject to severe planning restrictions on what can be built on them. Unless this constraint can be dealt with neither the Link Road, nor proposed Urban Village can proceed as proposed.
- 24 From a flooding perspective, the implementation of this Flood Alleviation Scheme, facilitated by a CPO, will have a positive impact on communities along the length of the Yazor and Widemarsh Brooks downstream of the proposed diversion. The planning statement attached to the Yazor Brook Flood Alleviation Scheme planning application estimated that within Hereford a total of 115 properties will be removed from the active floodplain, including 85 residential properties and 30 commercial properties.
- 25 There will be commensurate savings in the repairs of property damages caused by flooding. In addition, the risk of disruption to community infrastructure such as the major roads and other facilities will be reduced.

Financial Implications

- 26 Herefordshire Council has commissioned Savills to estimate the likely budget for acquiring the Scheme land and access rights. The entirety of this cost has been included in a funding

application to Advantage West Midlands for the wider Flood Alleviation Scheme; a decision on this application is expected in November 2009. The application and the final cost of the scheme are a part of the ongoing financial management of the project and, if approved, will be managed within the financial limits and procedures set up by Herefordshire Council and AWM as funding partners.

- 27 There are further cost implications to the Council of making a CPO should the Order be contested and be subject to Public Inquiry. The costs associated with an Inquiry have already been approved by AWM in a previous funding application.

Legal Implications

- 28 If a CPO is made and confirmed, compensation is payable to affected landowners in accordance with the relevant statutory provisions
- 29 It should also be noted that, as relevant National Trust land is involved, if there is an unwithdrawn objection from this landowner, "Special Parliamentary Procedure" will be invoked. This involves the order being laid before Parliament and if a petition of general objection is lodged within the statutory timescale, then the order would be referred to a joint committee of both houses to consider and report to Parliament as to whether to approve.

Risk Management

- 30 If the recommendation of this report is agreed the main risk to the Council is that the CPO is not confirmed by the Secretary of State. The implications of this are that there would be no certainty that the flood alleviation scheme could be implemented, and that flooding would continue in the ESG area and elsewhere in the city, potentially having an adverse affect on the timings and implementation of the wider ESG proposals, as they currently stand.
- 31 The above risk will be mitigated by continuing negotiations with landowners to the last minute and continuing with suitable professional guidance and advice, including appropriate legal representation at any Inquiry.
- 32 Should the recommendation of this report be declined, the risk to the Council is that the land and rights needed for the scheme will not be securable by negotiation within a suitable time frame and/or cost, leading to continued ESG and wider city flooding and the potential adverse affect on the timings and implementation of the wider ESG proposals, as they currently stand.
- 33 The above risk could be mitigated if the Council were prepared, and able, to extend the timescales for the implementation of the current ESG proposals, and / or were able to meet any increase in costs incurred as a result of a wholly negotiated process.

Consultees

- 34 A number of briefings on the Flood Alleviation Scheme have been held for members of the public, Local Members (for those Wards affected either by the FAS construction or benefiting from land being removed from the flood plain) and Parish Councils, including Hereford City Council.

Appendices

Appendix 1 – Plan of the ESG Area

Appendix 2 – Yazor Brook Flood Alleviation Scheme Options Appraisal – Capita Symonds

Appendix 3 – Draft map showing land interests.

Background Papers

None identified.