

REPORT TO CABINET

13 June 2018

Subject:	A4123 Birchley Island/M5 Junction 2 Improvement, Oldbury
Presenting Cabinet Member:	Councillor David Hosell – Cabinet Member for Highways and Environment Councillor Paul Moore – Cabinet Member for Regeneration and Economic Investment
Director:	Executive Director – Neighbourhoods – Dr Alison Knight
Contribution towards Vision 2030:	
Key Decision:	Yes
Forward Plan (28 day notice) Reference:)	SMBC12/01/2018
Cabinet Member Approval and Date:	Councillor Moore – 22.03.2018 Councillor Hosell – 22.03.2018
Director Approval:	Dr Alison Knight
Reason for Urgency:	Urgency provisions do not apply
Exempt Information Ref:	Exemption provisions do not apply
Ward Councillor (s) Consulted (if applicable):	Ward councillors have not been consulted
Scrutiny Consultation Considered?	Scrutiny have not been consulted
Contact Officer(s):	Andy Miller – Strategic Planning & Transportation Manager andy_miller@sandwell.gov.uk Robin Weare – Services Manager, Highways robin_weare@sandwell.gov.uk

DECISION RECOMMENDATIONS

That Cabinet:

1. Approves the submission of the A4123 Birchley Island/M5 Junction 2 Improvement Major Scheme Business Case to the Black Country Local Enterprise Partnership and West Midlands Combined Authority and that acceptance of funding will be subject to a full Strategic Investment Unit appraisal and Cabinet approval.
2. Approves the use of the Council's Compulsory Purchase powers to acquire land and property required for the scheme at A4123 Birchley Island/M5 Junction 2.
3. Authorises the Director – Monitoring Officer to make the Borough Council of Sandwell (A4123 Birchley Island/M5 Junction 2 Improvement, Oldbury) Compulsory Purchase Order in respect of the land needed for highway improvement purposes shown shaded pink and blue on drawing No.P 60479226/SK/78 and more particularly, marked "Map referred to in Borough Council of Sandwell (A4123 Birchley Island/M5 Junction 2 Improvement, Oldbury) Compulsory Purchase Order" or such lesser land as may be deemed necessary under the powers contained in sections 239, 240 and 250 of the Highways Act 1980 subject to the conclusion of an agreement with Highways England under section 6 (1) of the Highways Act 1980.
4. Authorises the Director – Regeneration and Growth to make minor amendments to the Borough Council of Sandwell (A4123 Birchley Island/M5 Junction 2 Improvement, Oldbury) Compulsory Purchase Order and the "Map referred to in Borough Council of Sandwell (A4123 Birchley Island/M5 Junction 2 Improvement, Oldbury) Compulsory Purchase Order" prior to it being made and submitted for confirmation.
5. Authorises the Director – Monitoring Officer to affix the common seal of the Council and serve the necessary notices and documentation as required by the Highways Act 1980 and Acquisition of Land Act 1981 and submit the Compulsory Purchase Order to the Secretary of State for Transport for conformation.
6. In the event the Compulsory Purchase Order is unopposed and granted powers to do so by the Secretary of State for Transport, authorise the Director – Monitoring Officer to confirm the above order and serve all necessary notices to implement the Compulsory Purchase Order including the issuing of sheriff warrants.
7. Authorises the Director – Regeneration and Growth to enter into negotiations and to acquire land and property within the proposed Order lands, in advance of confirmation of the Compulsory Purchase Order by the Secretary of State subject to the availability of finances.

8. Authorises the Director – Monitoring Officer to enter into any licences, undertaking or other agreements to facilitate the Compulsory Purchase Order on terms to be agreed on terms to be agreed by the Director – Regeneration and Growth.
9. Authorises the Director – Monitoring Officer to make the Borough Council of Sandwell (A4123 Classified Road) (Side Roads) Order as shown on drawing No. P 60479226/SK/75 (attached) under the powers contained in sections 14 and 125 of the Highways Act 1980.
10. Authorises the Director – Regeneration and Growth to make minor amendments to the Borough Council of Sandwell (A4123 Classified Road) (Side Roads) Order prior to it being submitted for confirmation.
11. Authorises the Director – Monitoring Officer to affix the common seal of the Council, and serve the necessary notices in accordance with the provisions of Schedule 1 of the Highways Act 1980 and submit the Sides Road Order to the Secretary of State for Transport for conformation.
12. Authorises Director – Monitoring Officer to take all necessary action to secure the making, confirmation and implementation of the Compulsory Purchase Order and Side Roads Order and if objections are received to the Compulsory Purchase Order and Side Roads Order make arrangements for public inquiries including instructing external Counsel and Consultants to assist in the preparing evidence and the presentation of the Council's case at any public Inquiry.
13. In the event that the Compulsory Purchase Order and Side Roads Order is confirmed by the Secretary of State for Transport, authorises the Director – Monitoring Officer to serve all necessary notices to implement the powers of compulsory acquisition, including be authorised to make General Vesting Declarations, notices to treat and notices of entry to take all other requisite steps to obtain possession of the properties and to obtain a Sheriff's Warrant for possession of any lands where it has not been given.
14. Authorise the Director – Monitoring Officer acquire the necessary interests in the land and property included in the confirmed Compulsory Purchase Order on terms to be agreed by the Director – Regeneration and Growth or as ordered by the Lands Tribunal.
15. Approves the allocation of up to £2.82m as a local contribution from Council Capital in order to facilitate BCLEP and WMCA approval of 90% of the scheme cost.

1 PURPOSE OF THE REPORT

- 1.1 This report seeks approval to submit a Major Scheme Business Case to the Black Country Local Enterprise Partnership and the West Midlands Combined Authority in respect of the proposed improvement at Birchley Island/M5 Junction 2.
- 1.2 Approval is also sought for the making and submitting of Compulsory Purchase (CPO) and Side Roads (SRO) Orders to the Secretary of State for Transport in order to secure the statutory powers needed to enable the scheme to be constructed subject to the confirmation of funding by the Black County LEP and the WMCA.

2 IMPLICATIONS FOR THE COUNCIL'S VISION

- 2.1 Improvements to the motorway network and its junctions form an important component of the overall transport strategy set out in the West Midlands Strategic Transport Plan – Movement for Growth, the Black Country Core Strategy and Sandwell's individual Development Plan Documents. The proposed improvements at Birchley Island/M5 junction 2 will contribute to a safe and efficient transport system. This in turn will assist in achieving the Council's 2030 ambitions Nos. 6, 7 and 9 by improving access to facilities and services, and to jobs, improving the environment and contributing to the economic wellbeing of the borough through improved links to national and international markets.

3 BACKGROUND AND MAIN CONSIDERATIONS

- 3.1 The linked roundabouts at Birchley Island on the A4123 and Junction 2 of the M5 Motorway form an important node on the principal road network of Sandwell, the Black Country and the wider West Midlands metropolitan area. The junctions provide access to the national motorway network for the south west of the Black Country and the west of Birmingham.
- 3.2 As part of the process for adopting the Black Country Core Strategy, the Highways Agency (now Highways England) requested that proposals to improve Junctions 1 and 2 of the M5, and junctions 9 and 10 of the M6 be prioritised in order for the plan to be considered 'sound'. This was accepted by the four local authorities at the Examination in Public (EIP) in July 2010. As such the improvement at Birchley Island/Junction 2 is a vital element of the strategy for Regeneration Corridors 12 and 13 of the BCCS. Without the proposed improvement, the growth envisaged in these corridors cannot be sustained. This position was strengthened further at the EIP for the Sandwell Site Allocations & Delivery Plan and the West Bromwich Area Action Plan in February 2012.

- 3.3 The Highways Agency carried out improvements to the Motorway slip roads in 2013 as part of its Pinch Points Programme. Proposals to improve Birchley Island itself along with the link to Junction 2 were included in the Black Country LEP's Strategic Economic Plan (SEP) in 2014 following submission of a Strategic Outline Case (SOC) by the Council.
- 3.4 The junction complex suffers from significant levels of congestion, not only at peak hours but throughout the day. This impacts on the competitiveness of local businesses, and the reliability of bus services which use both the A4034 and A4123.
- 3.5 Birchley Island lies at the intersection of two routes on the Sandwell Cycle Network along the A4123 and A4034. The junction represents a significant barrier to pedestrian movement and the passage of cyclists. There are no controlled pedestrian crossing facilities immediately at the junction nor are there any measures to accommodate cycle movements. As such it is a priority for sustainable transport initiatives involving the reduction of congestion, reduced carbon emissions, reduction of bus journey times and improvements for cycling/walking.
- 3.6 The junction also suffers from a poor accident record. There were 32 injury accidents at the junction in the five years to 1st April 2017.
- 3.7 The proposed scheme involves the widening of all approaches to the junction along with provision of through lane along the line of the A4123 to create a 'hamburger' type junction with traffic signals at all key intersections. Controlled pedestrian crossings and dedicated cycle routes will be incorporated into the design. This will achieve the following aims:
- Reduce delays and congestion - This will have a positive impact on Black Country businesses whose goods are transported through this junction onto the regional and national networks. It will support growth and increase regeneration opportunities.
 - Improve bus service reliability - This will assist in improving the attractiveness of buses and contribute to modal shift.
 - Reduce severance and improve pedestrian and cycle links - Safer and more convenient links will reduce the severance effect of the junction and its approaches.
 - Improve road safety - Improved junction control, lane markings and pedestrian/cycle facilities will reduce the potential for accidents.

4 THE CURRENT POSITION

- 4.1 The preliminary design of the scheme has been completed and a Major Scheme Business Case has been prepared. The cost/benefit analysis carried out in support of this business case shows that the scheme generates a benefit/cost ratio (BCR) of 4.9 based on a 2018 out turn cost of £26.8m. This puts the scheme in the Department for Transport's 'very high' value for money category. The design and business case have recently been subject of an independent review by consultants and detailed discussions at meetings. A revised business case, reflecting more detailed costings will be prepared prior to submission of the scheme to comply with the BCLEP and WMCA Assurance Frameworks.
- 4.2 The scheme as currently proposed is designed to accommodate growth resulting from development identified in the Black Country Core Strategy and the Sandwell Site Allocations and Delivery Plan. Should additional development proposals emerge the additional traffic impact would need to be mitigated as part of those developments and this may include additional land acquisition.
- 4.3 Highways England is the Highway Authority for the roundabout at M5 Junction 2 and for the link road between the roundabout and Birchley Island. The preferred scheme requires works to both and the acquisition of land adjacent to the link road. Under section 6 (1) of the Highways Act 1980, the Secretary of State with responsibility for transport may by agreement with a metropolitan district council delegate its powers to the district council for the purposes of the maintenance or improvement of its highways. Cabinet gave authority to enter into such an agreement with Highways England on 27th June 2016 and the legal work to enable this agreement to be signed is underway.
- 4.4 A Project Board has been established to oversee the project consisting of the Black Country Director of Transport along with Sandwell Council's Executive Director for Neighbourhoods, Executive Director Resources, Highways Services Manager, Strategic Planning & Transportation Manager and the scheme's Project Manager.

5 CONSULTATION (CUSTOMERS AND OTHER STAKEHOLDERS)

- 5.1 Stakeholder consultation on options took place during summer 2014. Full details are contained in the reports to Cabinet on 29th October 2014 and 18th February 2015.

6 ALTERNATIVE OPTIONS

6.1 Four options were considered during the feasibility stage.

- a) Minimum modifications
- b) Two-way 'hamburger'
- c) One-way 'double hamburger'
- d) Replacement of the roundabout with a traffic signal junction

Option (b) is the preferred option as it provides the best combination of benefits and affordability. Full details of these options and the reasons the preferred option was chosen are contained in the reports to Cabinet on 29th October 2014 and 18th February 2015.

6.2 For the project to proceed to delivery there is no alternative to submitting the updated Major Scheme Business Case for appraisal or for securing the statutory powers set out in the recommendations.

7 STRATEGIC RESOURCE IMPLICATIONS

7.1 A sensitivity analysis using various cost estimates indicates a cost estimate range from a high risk £25.9m to a low risk £28.2m. An independent estimate for the improvements of Birchley Island of £26.2m has been provided by AECOM Birmingham Office. All estimates have a similar basic cost with different assumptions applied for utility diversions, land costs, inflation and optimism bias.

7.2 The Black Country LEP has indicated a programme allowance of £16m from the Local Growth Fund towards delivery of the project subject to successfully complying with the requirements of its Assurance Framework and the completion of the statutory procedures related to the CPO and SRO for which approval is sought. Subject to the Council identifying a 10% local contribution, the WMCA has indicated that it could fund the balance, again subject to complying with its Assurance Framework.

7.3 A minimum 10% local contribution is usually required to secure the approval of external funding from the LEP and CA. This was also a requirement of the Department for Transport when it directly funded major schemes in the past such Owen Street Relief Road and the A41 Underpass. The local contribution will be expected by Local Authority partners who have also been required to make similar contributions for recent major scheme approvals.

7.4 The independent estimate of £26.2m would require a local contribution of £2.62m with the balance of £7.58m being made up by the CA. At the low risk estimate of £28.2m the figures would be £2.82m and £9.38m respectively.

- 7.5 The following cost risks may need to be covered in full or in part by the Council should they materialise;
- Optimism bias recommended in HM Treasury Green Book Supplementary Guidance has been applied at 44% for standard civil engineering. Utility diversions could be classified as non- standard civil engineering for which 66% optimism bias would be applied.
 - Escalation of Utility Diversion costs beyond the 44% provision is possible based on past experience as there remains significant uncertainty without a full trial pit investigation.
 - CPO land costs need to be negotiated with some large commercial organisations and may exceed the estimated costs.
 - Construction price inflation may exceed 2.5% per annum for 3 years to reach the end date for the middle phase of construction. This can be a feature of a recovering economy.
 - Programme delays increasing the shortfall in spend before the BCLEP deadline of 31st March 2021.
- 7.6 The costs relating to the design, public consultation and the preparation of the Major scheme Business Case have been met from the capital programme resources of £620,000 previously allocated for the development of the Birchley Island scheme in May 2013.
- 7.7 The costs relating to the preparation and submission of the compulsory purchase and side roads orders and any resultant public local inquiry will also be met from the existing capital programme allocation. At present these are estimated at £190,000. All costs borne by SMBC in relation to the CPO/SRO process are included in the overall 10% local contribution referred to in paras 7.2 to 7.4 above.
- 7.8 In the case of the BCLEP funding, this has to be spent by 31st March 2021. In order to achieve this timescale, it will be necessary to commence the CPO/SRO process in the spring of 2018 to give sufficient time to accommodate a Public Local Inquiry should this prove necessary, complete the tendering processes to establish an agreed contract price, and to seek final approval from the BCLEP and WMCA. The expenditure of the BCLEP funding within the deadline is dependent upon the third party performance of utility companies in completing the necessary diversion work within this timescale.

8 LEGAL AND GOVERNANCE CONSIDERATIONS

- 8.1 The Compulsory Purchase Order will be made using powers contained in the Highways Act 1980, specifically sections 239, 240 and 250.

- 8.2 The Side Roads Order will be made using powers contained in the Highways Act 1980, specifically sections 14 and 125.
- 8.3 The rights of property owners within the Human Rights Act 1998 particularly Article 8, Article 14 and Article 1 of the First Protocol have been considered. The compulsory acquisition of land would not constitute an unlawful interference with any of these.
- 8.4 In certain circumstances if land is blighted by the proposed scheme the owners of the land in question may serve a Blight Notice on the Authority which, if valid, could force its acquisition of the land prior to a Compulsory Purchase Order being confirmed by the Secretary of State. The definition of blighted land is contained within schedule 13 Town and Country Planning Act 1990. Whilst the likelihood of any valid Blight Notices being received is considered very low, it should be noted that the Council currently has no financial provision for such acquisitions. In the event that valid Blight Notices are received, any resultant expenditure incurred by SMBC would be reimbursed from budgets specifically allocated to the scheme following full approval.
- 8.5 Highways England is the Highway Authority for the roundabout at M5 Junction 2 and for the link road between the roundabout and Birchley Island. The preferred scheme requires works to both and the acquisition of land adjacent to the link road. Under section 6 (1) of the Highways Act 1980, the Secretary of State with responsibility for transport may by agreement with a metropolitan district council delegate its powers to the district council for the purposes of the maintenance or improvement of its highways. Cabinet gave authority to enter into such an agreement with Highways England on 27th June 2016.

9 EQUALITY IMPACT ASSESSMENT

- 9.1 An initial screening for equality impact indicates that the proposals do not raise any issues that would require a full Equality Impact Assessment. However as the scheme is only at preliminary design stage the need, or otherwise, for an EIA will be reviewed as part of the scheme's progress through the approvals process.

10 DATA PROTECTION IMPACT ASSESSMENT

- 10.1 The requirements of the General Data Protection Regulations will be observed in the management of any data collected during the preparation of the CPO and SRO and, once made, resulting from the statutory objection periods relating to them.

11 CRIME AND DISORDER AND RISK ASSESSMENT

- 11.1 There are no crime and disorder implications arising from the recommendations of this report.
- 11.2 The Corporate Risk Management Strategy (CRMS) has been complied with to identify and assess the significant risks associated with this decision. This includes (but is not limited to) political, legislation, financial, environmental and reputation risks. Based on the information provided, it is the officers' opinion that for the significant risks that have been identified arrangements are in place to manage and mitigate these effectively.
- 11.3 The indicated funding arrangements would accommodate mid-range estimates of cost and programme risk with two exceptions Firstly the allocation of cost risk above £27.5m estimate needs to be confirmed. Secondly there is no allowance for slippage in the anticipated programme for utility diversions that would need to be completed and paid for in advance of the 31st March 2021 deadline for expenditure of the £16m BCLEP funding

12 SUSTAINABILITY OF PROPOSALS

- 12.1 The specification of the £27.5m scheme is sufficient to ensure that future revenue requirements for the maintenance of these improvements can be managed within existing resources allocated for highway maintenance purpose.
- 12.2 There are no identifiable revenue costs resulting from the proposed project. There will be small reductions in energy costs arising from the use of LEDs. Planned interventions in maintenance, upgrading and renewal will lead to reduced revenue liabilities for the Council over the coming years. However, the increased infrastructure will slightly add to future maintenance liability.

13 HEALTH AND WELLBEING IMPLICATIONS (INCLUDING SOCIAL VALUE)

- 13.1 The proposed improvements at Birchley Island/M5 junction 2 will contribute to a safe and efficient transport system. This in turn will assist in improving access to facilities and services, and to jobs, improving the environment and contributing to the economic wellbeing of the borough through improved links to national and international markets.

14 IMPACT ON ANY COUNCIL MANAGED PROPERTY OR LAND

- 14.1 The proposed scheme involves works to improve the existing public highway. The scheme will increase the highway infrastructure to be maintained including the overall area of carriageway. However the proposals will also secure the timely repair and renewal of highway assets (carriageway/footway surfaces, drop crossings, drainage covers, kerbing, street-lighting, street signs and traffic signals), in a planned, focused and comprehensive manner, to prolong the life of these elements and mitigate the risk of early reconstruction arising from the significantly increased traffic volumes.

15 CONCLUSIONS AND SUMMARY OF REASONS FOR THE RECOMMENDATIONS

- 15.1 The submission of the Major Scheme Business Case will enable the project to move through the Black Country LEP and WMCA assurance processes and thus secure funding from both bodies.
- 15.2 The project cannot be implemented without the acquisition of land not currently in public ownership. Whilst every effort will be made to acquire the necessary land through negotiation with owners and other interested parties, it is likely that a Compulsory Purchase Order will be needed to secure all of the land required. Therefore, authority is sought to make the CPO and to acquire and take possession of the Order lands using appropriate powers.
- 15.3 In addition to the CPO, a Side Roads Order is required to obtain the necessary powers to construct the scheme and to close or divert side roads and private means of access. Therefore, authority is sought to make the SRO under appropriate powers.

16 BACKGROUND PAPERS

- 16.1 Strategic Resources DMS - 13th June 2013
- 16.2 Report to Cabinet - 29th October 2014
- 16.3 Report to Cabinet 18th February 2015
- 16.4 A4123 Birchley Island/M5 Junction 2 Improvement – Major Scheme Business Case (2015)
- 16.5 Report to Cabinet – 27th July 2016
- 16.6 Black Country Core Strategy (2011)
- 16.7 Sandwell Site Allocations & Delivery DPD (2012)
- 16.8 West Midlands Strategic Transport Plan – Movement for Growth (TfWM 2016)
- 16.9 Movement for Growth – Ten Year Delivery Plan (TfWM 2017)
- 16.10 Black Country Strategic Economic Plan (BCLEP 2014)

17 **APPENDICES:**

- A Draft Compulsory Purchase Order Map - Drawing No. P 60479226/SK/78
- B Draft Side Roads Order Plan – Drawing No. P 60479226/SK/75
- C Black Country LEP Letter of Support

Dr Alison Knight
Executive Director – Neighbourhoods