

# CABINET

<b>DATE</b>	20th July 2022
<b>REPORT OF</b>	Councillor Philip Jackson, Leader of the Council and Portfolio Holder for Economy, Net Zero, Skills and Housing
<b>RESPONSIBLE OFFICER</b>	Sharon Wroot Executive Director Environment, Economy and Resources
<b>SUBJECT</b>	Compulsory Purchase Order relating to land at Stallingborough Industrial Development Site
<b>STATUS</b>	Open
<b>FORWARD PLAN REF NO.</b>	CB 02/22/09

## CONTRIBUTION TO OUR AIMS

The South Humber Industrial Investment Programme (SHIIP) will play a key role in creating a “Stronger Economy”. It will achieve this by delivering a programme of projects that will overcome key environmental and infrastructure constraints that are acting as a deterrent to business investment. The programme includes the provision of a quality serviced industrial site that is immediately available to new inward investors, secures ecological mitigation and the implementation of the South Humber Bank Link Road to improve the connectivity between the ports of Immingham and Grimsby.

## EXECUTIVE SUMMARY

Following Cabinet approval on 13<sup>th</sup> January 2021 the (Stallingborough Interchange Development Site) Compulsory Purchase Order 2021 (“the 2021 Order”) was made and submitted to the Secretary of State.

As part of ongoing negotiations with the land owners subject to the 2021 Order, the Council has obtained advice from Leading Counsel in relation to the extent of the ‘No Scheme World’ as applicable to the 2021 Order. The advice concluded that the correct ambit of the Scheme was much wider than set out in the Statement of Reasons on the 2021 order, which should therefore be withdrawn, and a new Statement of Reasons made.

Therefore Cabinet is being asked to approve the making of the substitute order (“the 2022 Order”) so that the resolution to make the 2022 Order is made taking into account the amended Statement of Reasons.

## **RECOMMENDATIONS**

It is recommended that Cabinet:

1. Notes the key changes to the Statement of Reasons
2. Resolves to make and publish the North East Lincolnshire (Stallingborough Interchange Development Site) Compulsory Purchase Order 2022 and to submit the Order to the Department for Levelling Up, Housing and Communities.
3. Delegates the Executive Director Environment, Economy and Resources in consultation with the Leader of the Council and Portfolio Holder for Economy, Net Zero, Skills and Housing the authority to make all consequential arrangements in connection with and arising from the making of the 2022 Order including, but not limited to, the instructing of counsel and experts in connection with this matter, dealing with any objections and public inquiry, the making of General Vesting Declarations, the taking of any steps in connection with the stopping up or diversion of public or private rights, agreeing compensation and the conduct of litigation at the Upper Tribunal (Lands Chamber).

## **REASONS FOR DECISION**

This report is accompanied by a proposed draft Compulsory Purchase Order (“the 2022 Order”) and Order Map (“the 2022 Plan”) together with a Statement of Reasons for the 2022 Order.

The attached Statement of Reasons contains detailed reasoning and justification for the 2022 Order. These should be read and considered as part of this report.

The 2022 Order, if confirmed, is broadly for the same purpose as the 2021 Order and will ultimately provide compulsory purchase powers in respect of 3 plots of land which are identified both in the schedule to the 2022 Order and on the 2022 Plan. These are critical pieces of land in respect of the development of Phase 1B and Phase 2 of the development of the Stallingborough Interchange Development Site.

The 2021 Order was withdrawn following advice by Leading Counsel because of concerns that the ‘No Scheme World’ as defined in paragraph 7 the 2021 Statement of Reasons defined the scheme too narrowly.

Negotiations have been ongoing with the owners of Plot 1 and Plot 2, with the aim of avoiding the need for compulsory purchase of these plots. However, to date, it has not proved possible to secure an agreement, as the value of the land remains in dispute. Therefore, it is deemed necessary to resume the compulsory purchase process in relation to these plots.

Even if ultimately terms are settled for the acquisition of Plots 1 and 2, Plot 3 comprises parts of the Old Kiln Lane and Ephams Lane which are ancient tracks with no obvious

owner. Therefore, the Council will need to pursue the 2022 Order to acquire this land in any event.

The acquisition of the Phase 1B and Phase 2 land will give the Council control of the development of the whole site in line with the local plan and the aspiration of the authority to attract inward investors from new industrial sectors such as advanced engineering as well as supporting local businesses who are looking to expand their existing operations.

## **1. BACKGROUND**

- 1.1 This paper does not set out the full background to the SHIP scheme which was described in some detail in the Cabinet Report of January 2021 and which is included as a background paper.
- 1.2 Instead it focusses on one part of the 2021 Statement of Reasons connected with what is referred to in Compulsory Purchase terms as the 'No Scheme World'.
- 1.3 There is a legal framework within which compensation for compulsory purchase is to be agreed or determined by a Court, (the Upper Tribunal (Lands Chamber)). One of the legal principles is that the effects of the Scheme which underlies the need for compulsory purchase is to be ignored for the purpose of determining compensation. Hence the compensation is based upon a "*No Scheme World*".
- 1.4 The latest guidance issued in July 2019 by the then Ministry of Housing, Communities and Local Government (now the Department for Levelling Up, Housing and Communities) said that the Statement of Reasons should include a statement justifying the extent of the scheme to be disregarded for the purposes of assessing compensation in the 'no-scheme world'.
- 1.5 Following discussions with the Council's officers, the Council's external legal team (Browne Jacobson LLP) and the Council's land and CPO agents (JLL), it was agreed that Leading Counsel's opinion should be sought as to the extent of the 'No Scheme World' as applicable to the 2021 CPO.
- 1.6 Leading Counsel has provided this advice and concludes that the scheme is far wider and encompasses the whole SHIP project for the Stallingborough Interchange Development Site.
- 1.7 Leading Counsel further advised that this was not something that should be changed by a way of amendment to the Council's position in the documentation leading up to a public inquiry for the Compulsory Purchase Order. Instead the Council should withdraw the 2021 Order and remake the Order based upon the position he advised on the No Scheme World.
- 1.8 Officers, following discussions with the Council's solicitors, came to the conclusion that, the potential benefits of a new resolution to make the order with an expression of the new position on the No Scheme World outweighed any disbenefits of delay. In this respect:-

- I. The underlying purpose for making the 2022 Order are the same as those for the 2021 Order and the Council will not have increased the risk of a failing to get the 2022 Order confirmed because of making the changes to the Statement of Reasons.
- II. The delay to the programme is not expected to be more than a few months and the risk to land supply is not significant in this respect.
- III. The interpretation of the 'no scheme world' is significant to ensure that land owners are awarded the appropriate level of compensation due. The Council have sought advice from leading counsel on this issue which should inform both the CPO itself and negotiations moving forward. It is considered that certainty for all parties on this issue outweighs any disbenefits of delay

1.9 Cabinet should note that as well as the owners of Plots 1 and 2 objecting to the Order two further objections were received:-

- a. National Grid, in spite of assurances that their plant will not be affected want the Council to enter into an Asset Protection Agreement and steps are currently underway to address this.
- b. The owner of land on the east side of the scheme has objected to the acquisition of that part of Old Kiln Lane. Whilst any interest they may have in Old Kiln Lane was specifically excluded from the 2021 CPO (and would be for the 2022 CPO), the Council will continue to engage with them to address concerns they may have in relation to ongoing access to their land.

1.12 On the basis of the above background Cabinet is recommended to approve the making of the further order on the terms set out in the recommendations.

## **2. RISKS AND OPPORTUNITIES**

2.1 The Risks and Opportunities remain the same as set out in the 2021 Cabinet Report.

## **3. OTHER OPTIONS CONSIDERED**

3.1 Do nothing – a decision not to proceed with the CPO could allow the development to be delayed indefinitely. This would therefore impact upon the Council's ability to generate jobs and business rates through the programme. Therefore the revised 2022 Order needs to be made now.

## **4. REPUTATION AND COMMUNICATIONS CONSIDERATIONS**

4.1 The reputational position remains the same as that set out in the 2021 Cabinet Report. SHIP is a key project and securing the land to enable delivery is a key part of this.

## **5. FINANCIAL CONSIDERATIONS**

- 5.1 The compensation payable in accordance with Leading Counsel's view of the 'No Scheme World' places the Council in the best position to accurately and fairly assess the compensation due to land owners affected by the 2022 CPO. In practice, Leading Counsel's view that agricultural value is the appropriate basis for compensation may result in significant savings to the Council. There remains the likelihood that the owners will advance a "hope value" element of their claim but this is considered to be rather unrealistic given the level of investment which has been and is required to provide the necessary infrastructure for the development. This is likely to outweigh any cost of remaking the Order. Of course, the main aim remains to negotiate a deal with the landowners.
- 5.2 The landowners appear to be making unrealistic land value demands which do not adequately reflect the value of their land in the light of the Scheme. Absent of a CPO they could simply prevent the development until the Council gave in to those unreasonable demands which the Council will not do. Whilst negotiations are ongoing, it is appropriate for the Council to pursue the CPO so as to provide the means to overcome this impasse if it cannot be resolved by negotiation.

## **6. CHILDREN AND YOUNG PEOPLE IMPLICATIONS**

- 6.1 The SHIP project is not anticipated to have any immediate direct impacts on children and young people in the area of the Council.
- 6.2 The indirect impacts, both short and long term, are considered to be positive.
- i. The creation of jobs will support families in the area as well as increasing long term job prospects for young people;
  - ii. The revenue brought into the Council through additional business rates will support the Council to create a strong and vibrant local economy that in turn can benefit children and young people in the area.

## **7 CLIMATE CHANGE AND ENVIRONMENTAL IMPLICATIONS**

- 7.1 The SHIP project supports the Council's environmental priorities:
- 7.1.1 The new Humber Link Road will significantly reduce the time and cost of travel between Grimsby and Immingham as well as reducing the pressure on the A180. This will reduce waste and have a positive effect on carbon emissions.
- 7.1.2 SHIP's mitigation strategy will have a huge impact on the area's environmental footprint by providing over 120 hectares of mitigation land which is designated specifically for the protection of over-wintering birds. This has been done in a manner that presents wider environmental benefits through the scale and form

of the habitat provided. This is effectively an example of biodiversity net gain.

- 7.1.3 The new Stallingborough Interchange Development Site is a flagship development and will aim to attract businesses that will support the Council's ambitions in terms of reducing the area's carbon footprint and offer a positive impact on climate change.

## **8. CONSULTATION WITH SCRUTINY**

The Economy Scrutiny Panel received requested briefing notes in September 2018 and January 2019. On 22nd July 2019 the Panel called a workshop to receive an overview and update on SHIP including the SHIP Financial Model. All elected members were invited to attend.

## **9. FINANCIAL IMPLICATIONS**

- 9.1 The cost of the land purchase will be met from within the existing approved budget for the overall South Humber Industrial Investment Programme scheme.
- 9.2 The recommendation to make and publish Compulsory Purchase Order will enable the Council to bring forward a viable scheme which is in line with the approved budget.

## **10. LEGAL IMPLICATIONS**

- 10.1 The full legal implications of the clarification to the 'No Scheme World' position will only be seen if there is a compensation dispute following acquisition following the confirmation of the Order by the Secretary of State. In this situation the Upper Tribunal (Lands Chamber) would have to determine whether the Council's stance on this is to apply when compensation is assessed. Therefore, it will be sometime, if ever, before the full legal implications are seen. However, the change in position may, as has already been stated, affect the negotiating position of the objectors once they are advised about the risk of such a determination by the Tribunal.
- 10.2 The legal position is otherwise as set out in the 2021 Cabinet Report. Legal Services will continue to support the process, the decision to enter into a CPO should not be taken lightly and progress will continue to be reviewed.
- 10.3 The delegations sought are the same as were agreed in January 2021.

## **11. HUMAN RESOURCES IMPLICATIONS**

There are no direct HR nor Equality Duty implications arising from the contents of this report. These matters are explained in more detail at Section 11 of the Statement of Reasons.

## 12. WARD IMPLICATIONS

The programme will have implications for the Immingham ward. The economic benefits of the project will be distributed across North East Lincolnshire reflecting the continued economic importance of the SHIP project.

## 13. BACKGROUND PAPERS

Cabinet Reports:

SHIP 11<sup>th</sup> January 2021 ( <https://democracy.nelincs.gov.uk/wp-content/uploads/2020/06/5.-SHIP-Review-and-Stallingborough-Compulsory-Purchase-Order-PDF-161KB.pdf> )

12<sup>th</sup> February 2020

14<sup>th</sup> December 2017

13<sup>th</sup> January 2016

8<sup>th</sup> July 2015

Compulsory Purchase Documents:

Draft 2022 Compulsory Purchase Order

Draft 2022 Order Map

Draft Statement of Reasons

## 14. CONTACT OFFICER(S)

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