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## **USE OF COMPULSORY PURCHASE POWERS - UPPERTON ROAD VIADUCT**

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### **Report of the Corporate Director, Resources, Access and Diversity**

#### **1. Purpose of Report**

- 1.1 The declaration of Compulsory Purchase Orders (CPO's) is reserved to Cabinet and this report seeks approval to declare and make a CPO to compulsory acquire the land and rights required for the proposed Upperton Road viaduct highway scheme.

#### **2. Summary**

- 2.1 Upperton Road viaduct is over 100 years old and is in a poor state of repair. The replacement of the viaduct is identified as a major scheme within the bridge maintenance and strengthening section of the City of Leicester Local Transport Plan (2001–2006). In December 2003 the Department of Transport granted the City Council provisional approval for the funding of a replacement to the viaduct. This provisional funding amounts to a total of £19.1 million, subject to the statutory processes (obtaining planning consent and securing the land and rights required) being completed.
- 2.2 It is now proposed to demolish the existing viaduct and replace it with a new at-grade (ground level) highway on the alignment of the existing road. However, as this road is a main arterial route to and from the city centre it will be essential to maintain traffic flows along this corridor. To do this it will be necessary to construct a new temporary carriageway running adjacent to the existing viaduct, which will remain open (with the exception of several days) for the duration of the demolition of the viaduct and construction of the new road.
- 2.3 In order to demolish the viaduct and construct both the temporary and new roads, it will be necessary to acquire the land and rights of several parties. Negotiations to acquire these interests by agreement have commenced, however, to ensure certainty of delivery, it is essential to start the Compulsory Purchase process and run it in parallel with continuing negotiations.

- 2.4 The construction of the temporary and permanent roads are subject to obtaining planning consent and 2 applications have been submitted, which are due to be considered in early June 2005. It is not intended to make the CPO until there is a resolution to grant planning consent from the Development Control Committee.

### **3. Recommendations**

It is recommended that:-

- 3.1 The City Council declare and subsequently make a Compulsory Purchase Order pursuant to sections 239 – 246(1), 248, 250 and 260 of The Highways Act 1980, Section 13 of the Local Government (Miscellaneous Provisions) Act 1976 and the Acquisition of Land Act 1981 for the purpose of acquiring the land and rights identified in the plan in Appendix 1, which is required to successfully carry out The Upperton Road Viaduct Scheme.
- 3.2 The Director of Resources, Access and Diversity be authorised to advertise the making of the Order referred to 3.1 above and to take all relevant action thereon to promote the confirmation of the Order.
- 3.3 The Director of Resources, Access and Diversity (in consultation with the Cabinet Lead Member for Resources, Access and Diversity) be authorised:-
- (i) To agree terms to acquire the necessary interests within the CPO land, after making the CPO, including those, if any, determined by the Lands Tribunal.
- 3.4 The Head of Legal Services is authorised to prepare and execute all the necessary documentation required throughout the CPO process; including the acquisition of land and interests by agreement.

### **4. Financial and legal Implications**

Financial Implications (Nick Booth – Ext. 7460)

Any costs of acquisition made prior to the CPO will be met through Prudential Borrowing as agreed in the Upperton Road viaduct Cabinet report of September 2004.

Once the CPO is confirmed, the Council will be able to draw in Department of Transport funding to meet the acquisition costs.

Legal Implications (Lawrence Mawson – Ext. 6347)

The Council needs to be able to satisfy the Secretary of State that there is a compelling case in the public interest for the proposed compulsory acquisition. Additionally the Secretary of State has to be satisfied that the statutory procedures have been followed correctly.

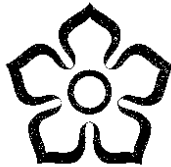
The Council will continue to take advice to ensure that it complies with the statutory procedures and guidance associated with the promotion of Compulsory Purchase Orders.

**5. Officer to contact:**

Brendan McGarry  
Principal Valuer  
Tel. No. 299 5089  
brendan.mcgarry@leicester.gov.uk

**DECISION STATUS**

<b>Key Decision</b>	No
<b>Reason</b>	
<b>Appeared in Forward Plan</b>	Yes
<b>Executive or Council Decision</b>	Executive (Cabinet)



Leicester  
City Council

**WARDS AFFECTED:  
WESTCOTES WARD**

**CABINET**

**13 JUNE 2005**

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## **USE OF COMPULSORY PURCHASE POWERS - UPPERTON ROAD VIADUCT**

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**Report of the Corporate Director, Resources, Access and Diversity**

### **SUPPORTING INFORMATION**

#### **1. Report**

##### **1.1 Background**

- 1.1.1 Upperton Road viaduct is over 100 years old and in a poor state of repair. The bridge, maintenance and strengthening section of the city of Leicester Local Transport Plan (2001-2006) identifies the replacement of the viaduct as a major scheme. In December 2003 the Department of Transport granted provisional approval for funding of £19.1 million, subject to statutory processes being completed. These statutory processes are obtaining planning consent and securing the land and rights required (either by negotiation or CPO).
- 1.1.2 Several options for replacing the existing viaduct were subject to public consultation and public exhibitions. The preferred option was to demolish the existing viaduct and to replace it with a new at-grade (ground level) highway on the alignment of the existing road. This option also includes a temporary highway for the duration of the construction contract, running adjacent and under the existing viaduct. This temporary road will ensure that traffic can continue to use this main arterial route into and out of the city. It is envisaged that for approximately 10 days the route will be totally closed when the arch of the existing viaduct which the temporary road goes under is demolished. This closure will be carefully timed to ensure it creates minimum disruption and alternative temporary routes will be provided and clearly signposted.
- 1.1.3 The estimated construction period for the road scheme is 20 months with an estimated start date of April 2006. This is on the assumption that agreement can be reached with all the affected parties whose land and interests are required, without using Compulsory Powers. Work is expected to finish in December 2007.

1.14 The finished scheme will result in a new high quality at-grade highway with new retaining walls at the western end of Upperton Road, a new bridge over the Old River Soar, a high quality pedestrian/cyclist crossing at the Great Central Way and associated landscaping and environmental enhancements.

## 1.2 CPO Powers

1.2.1 This is the second report to Cabinet from the Corporate Director of Resources, Access and Diversity regarding the Upperton Road Viaduct Scheme. The initial report in September 2004, which was approved by Cabinet, authorised the acquisition of land and rights by negotiation, prior to the CPO being confirmed. Since this report the Council has acquired one of the interests required.

1.2.2 Negotiations are continuing with affected parties, however, it is unlikely that all will reach a successful conclusion. The only way to ensure certainty in securing all the interests required for this scheme is to undertake a CPO, which can be used as a last resort to acquire outstanding interests. The use of a successful CPO should enable the proposed development to proceed within an acceptable timescale. It should also be noted that the confirmation of a CPO can also add impetus to secure negotiated settlements, as it brings certainty to the acquisition process. See Appendix 2 for a brief description of the CPO process.

1.2.3 If the Council has to rely on the CPO to acquire any of the interests required it could delay the proposed start date of April 2006. It is very hard to ascertain how long it takes to obtain a confirmed CPO as the length of time to get a public inquiry and then to receive the final report are in the sole control of central government departments. A delay of 6 months on the anticipated start date can be expected if the Council has to rely on CPO Powers.

## 1.3 Consequences on current owners and occupiers

1.3.1 The vast majority of the third party land and buildings required for the scheme are vacant with the acceptance of a property, which has 3 commercial tenants, which was purchased in December 2004 by the Council. The tenants will be served appropriate Landlord and Tenant Act notices when the property is ready to be demolished. This property will also be included in the CPO to ensure vacant possession can definitely be obtained. The Council will endeavour to assist in re-locating these tenants. The design of the new and temporary roads deliberately avoids residential properties, although it may be necessary to over sail with cranes a small number of houses on Sage Road.

1.3.2 Section 6 of the Human Rights Act 1998 prohibits public authorities from acting in a way, which is incompatible with the European Convention on Human Rights (ECHR). Various convention rights may be engaged in the process of making and considering a CPO. It is considered that the Upperton Road Viaduct Scheme and the proposed CPO will not infringe rights under the ECHR.

1.4 Concurrent/Associated Procedures

1.4.1 In addition to the Upperton Road Viaduct CPO, the Council has also made the Leicester City Council Upperton Road Viaduct Side Roads and Other Works Order 2005 in order to undertake works to existing highways to allow the temporary and permanent schemes to be built.

1.4.2 The making of this order is authorised by delegated authority.

1.5 Conclusion

1.5.1 The use of CPO powers, subject to confirmation of the Secretary of State, will secure the land and rights necessary to carry out the Upperton Road Viaduct Scheme within a realistic timescale.

## FINANCIAL, LEGAL AND OTHER IMPLICATIONS

### 1. Financial Implications - (Nick Booth – ext. 7460)

It is proposed that the City Council declares and makes a CPO to compulsory acquire land and rights required for the proposed Upperton Road Viaduct Scheme.

The Upperton Road viaduct – Purchase of Land in Advance (Cabinet report of September 2004) approved the purchase of land and rights in advance of the CPO using prudential borrowing. Any purchase in advance is delegated to the Corporate Director of Resources, Access and Diversity in consultation with the appropriate Lead Members and the Head of Finance.

The risk to the Council of any acquisition of land and rights after confirmation of a CPO is small. The total capital estimate of £19.1 million for the Upperton Road scheme contains a prudent estimate for land purchase, which officers believe should be more than sufficient.

The confirmation of the CPO is the last statutory requirement for the Department of Transport funding to be released (unless all interests have already been acquired by agreement) and therefore the purchases will not be completed under a CPO unless the capital funding for the scheme is confirmed.

In the unlikely event of the Department of Transport withdrawing the £19.1 million funding the Council will not proceed with CPO even if the Secretary of State confirms it.

### 2. Legal Implications

See Appendix 3.

### 3. Other Implications

OTHER IMPLICATIONS	YES/NO	Paragraph Within Supporting information	References
Equal Opportunities	} Yes	This major scheme requires all these issues to be addressed as part of the development programme.	
Policy			
Sustainable and Environmental			
Crime and Disorder			
Human Rights Act			
Elderly/People on Low Income	No		

### 4. Risk Assessment Analysis

See Appendix 4.

**5. Background Papers – Local Government Act 1972**

None, other than those referred to in the report (except for those referred to which are subject to either confidentiality provisions or data protection).

**6. Consultations**

Nick Booth – Financial Strategy

Lawrence Mawson – Legal Services Property & Development Team 1

Aman Mehra – Transport Strategy – Regeneration and Culture

**7. Officer to contact:**

Brendan McGarry

Principal Valuer

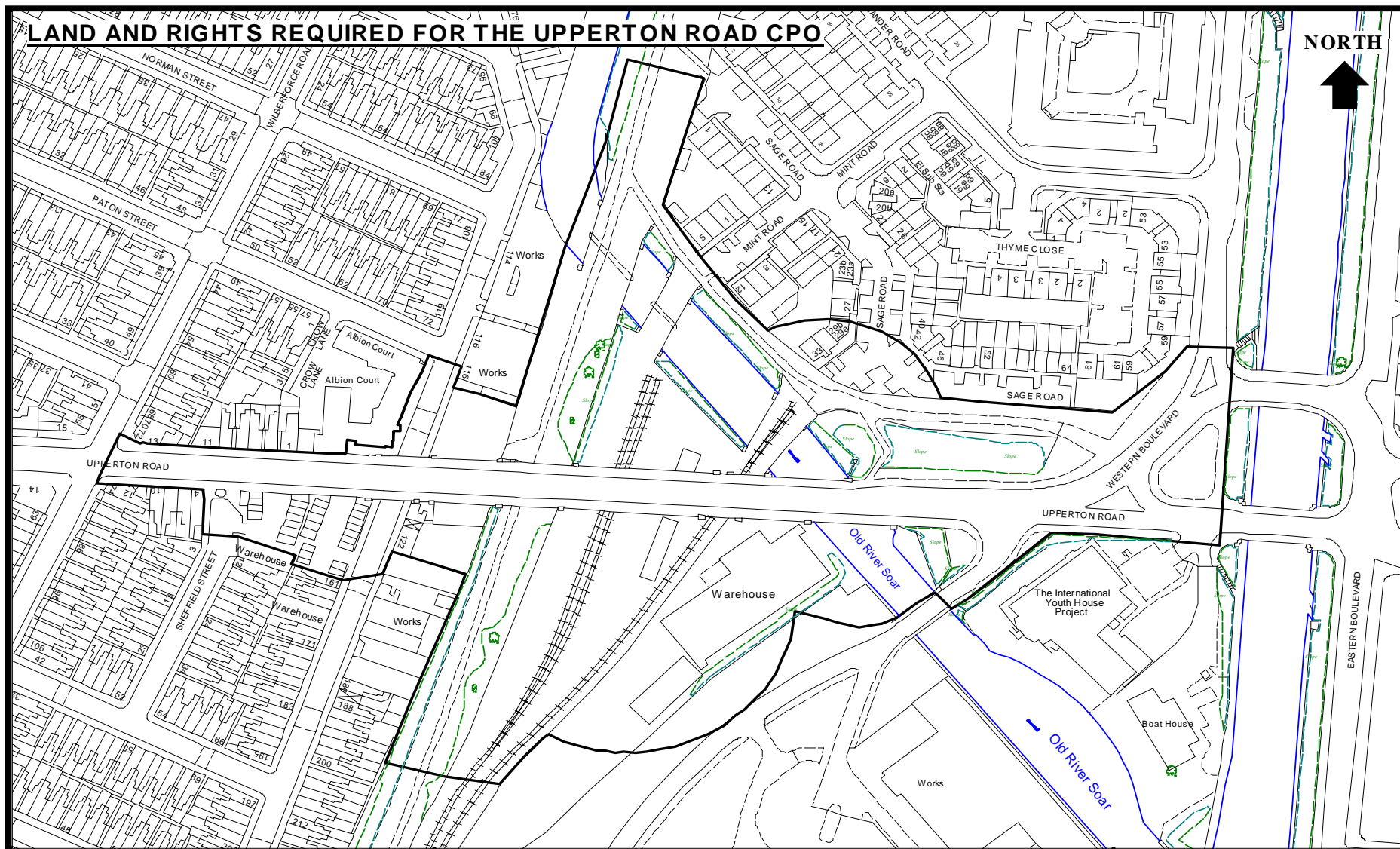
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**Tom Stephenson**

**Corporate Director of Resources, Access and Diversity**





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 CHECKED BY BMG

PLAN No Cttee 115  
 DATE 17/05/2005

**NOT TO SCALE**

TOM STEPHENSON, CORPORATE DIRECTOR OF RESOURCES, ACCESS & DIVERSITY  
 LEICESTER CITY COUNCIL

**THE CPO PROCESS**

This appendix provides a very brief and simplified description of the Compulsory Purchase procedure. The process outlined below is dependent on the initial investigations (e.g. agreement of the extent of the site and full title investigations) being successfully undertaken. It should also be noted that every effort should be made to acquire by agreement and CPO is really used as a last resort.

Once the above initial investigations have been carried out, the process for this scheme is briefly outlined below:-

- a) Cabinet resolution to declare and make a CPO.
- b) Preparation of statement of reasons – justification on why the CPO is required.
- c) Making the Order and notifying known owners and occupiers then submitting the Order to the Office of the Deputy Prime Minister – this includes the Statement of Reasons. The making of the Order is advertised and is available for general inspection.
- d) If no objections are received and the Minister is satisfied proper procedures have been followed, he can confirm the order without modification, subject to modification (e.g. certain properties are excluded from the Order) or reject it.
- e) If objections are received, it is usual for a public inquiry to be held usually within approximately 6 months from making the Order. The Council will have to provide a full statement of case for the inquiry.
- f) The Inspector heading the public inquiry provides a written report for the confirming Minister with his recommendations and the confirming Minister then either confirms, modifies or rejects the Order.
- g) 3 months after the CPO confirmation (providing proper procedure is followed and relevant notices served) a General Vesting Declaration can be executed which transfers all the land into the City Council's ownership, with the compensation payable to the owners and occupiers to be agreed later, if not already agreed at the time.
- h) In the event that compensation cannot be agreed between the Council and the claimant, then the compensation will be determined by the Lands Tribunal.

**NOTE:** This is a very simplified version of the CPO procedure which should not be used as a definitive guide.

**Legal Implications**

1. Where the Council embarks upon the compulsory purchase procedure, the liability to acquire statutorily blighted properties could arise immediately. However, it is not envisaged there will be any blighted properties in connection with this CPO.
2. The Council, as the acquiring authority, needs to be able to satisfy the Secretary of State that there is compelling case in the public interest for the proposed compulsory acquisition. The Secretary of State has to be able to take a balanced view between the intentions of the acquiring authority and the concerns of those whose land is to be expropriated. The more comprehensive the justification which require an authority can present, the stronger its case is likely to be.
3. In demonstrating its justification, the acquiring authority should provide as much information as possible about the resource implications both for acquiring the land and implementing a scheme, which for the land is required. The acquiring authority is also required to demonstrate that there is a reasonable prospect of the scheme going ahead and that it is unlikely to be blocked by any impediments to implementation.
4. Before embarking on the compulsory purchase, the Developer should seek to acquire land by negotiation wherever practicable. However, although the compulsory purchase process is intended as a last resort, once attempts to acquire by agreement fail, an acquiring authority should consider when the land they are seeking to acquire will be needed and, as a contingency measure, should plan a compulsory purchase timetable at the same time as conducting negotiations.
5. As compulsory purchase proposals will inevitably lead to a period of uncertainty and anxiety for the owners and occupiers of the affected land, it is essential that the acquiring authority keeps any delay to a minimum by completing the statutory process as quickly as possible (as directed by Government guidance). This means that the authority should be in a position to make, advertise and submit a fully documented Order at the earliest possible date after having resolved to make it. The authority should also take every care to ensure that the Order is made correctly and under its terms of the most appropriate enabling power.

6. The Secretary of State has to be satisfied that the statutory procedures have been followed correctly, even in respect of an unopposed Order. This means that the Secretary of State has to check that no-one has been or will be substantially prejudiced as a result of a defect in the order, or by a failure to follow the correct procedures with regard to such matters as a service of additional or amended personal notices. Authorities are therefore urged to take every possible care in preparing compulsory purchase orders, including recording the names and addresses of those with an interest in the land to be acquired.
7. The Council will continue to seek advice from the Council's external advisors to ensure that all appropriate steps are adhered to in the compulsory purchase process. The Council will continue to take advice to ensure that it complies with the statutory procedures and guidance associated with the promotion of the compulsory purchase orders.

**Lawrence Mawson**  
**Extn. 6347**

**APPENDIX 4**

<b>RISK</b>	<b>LIKELIHOOD</b>	<b>SEVERITY</b>	<b>CONTROL ACTIONS</b>
1. CPO not confirmed	L	H	The Scheme is unlikely to proceed as Site assembly will be frustrated due to lack of compulsion. The Council would retain property acquired in advance of the scheme.
2. Substantial increase in acquisition costs.	L	L	The Department of Transport funding should be sufficient to cover any increases in acquisition costs.
3. Department of Transport withdraws funding.	L	H	The scheme would not proceed and the Council would retain any land/buildings it had already acquired.