



16<sup>th</sup> March 2017

Agenda Item: 7

## **REPORT OF CORPORATE DIRECTOR, PLACE**

### **GEDLING ACCESS ROAD – SCHEME UPDATE, COMPULSORY PURCHASE ORDER AND SIDE ROADS ORDERS**

#### **Purpose of the Report**

1. To seek approval to take all necessary steps to make, advertise, obtain confirmation and implement a Compulsory Purchase Order to acquire land and rights required to deliver the Gedling Access Road under sections 239, 240, 246, 249 and 250 of the Highways Act 1980 and the Acquisition of Land Act 1981;
2. To seek approval to take necessary steps to make, advertise, obtain confirmation and implement a Side Roads Order under section 14 and 125, and in accordance with Schedule 1 of the Highways Act 1980 for the proposed Gedling Access Road.

#### **Information and Advice**

3. Nottinghamshire County Council (NCC) has been safeguarding proposals for a Gedling village bypass for over 50 years. This scheme forms part of proposals for the A612 Nottingham Eastern Outer Loop Road which has, with the exception of the eastern most section around Gedling village, been successfully completed by NCC. The Gedling Access Road (GAR) is currently the largest infrastructure scheme that NCC is delivering and will connect directly to the most recently constructed phase (the Gedling Major Integrated Transport Scheme) which opened to traffic in 2007. The construction of the GAR will have wide positive impacts to the transport network by improving connectivity of the local road network and reducing traffic flows along the Arnold Lane corridor thereby reducing congestion in Gedling village. The GAR also facilitates the redevelopment of the former Gedling Colliery / Chase Farm site (Gedling Colliery site).
4. The redevelopment of the Gedling Colliery site and adjoining land remains a priority for all the public-sector partners. This priority is supported by the government with the announcement on 8<sup>th</sup> January 2015 that the Gedling Housing Zone (comprising the GAR, former Gedling Colliery and Teal Close developments) was one of 10 housing zones outside of London selected to help provide thousands of new homes across the country.
5. Due to the limited availability of public funding the construction of GAR has not previously featured in any delivery programme. However, the redevelopment of the Gedling Colliery site has provided a catalyst for delivering the project with a significant financial contribution being secured from the Homes and Communities Agency (HCA) through a Development Agreement with Keepmoat Homes Limited (Keepmoat) who have been appointed as developer for the site.

6. NCC has the overall responsibility for land acquisition, design, procurement, construction and delivery of the GAR working in partnership with the HCA, Gedling Borough Council (GBC) and Keepmoat. Via East Midlands Limited (Via) on behalf of NCC, will be responsible for managing the land acquisition process and the design and project management of the road construction. The Compulsory Purchase Order (CPO) and Side Roads Order (SRO) (together the "Orders"), will be made by NCC as these powers are not delegated to Via.
7. At the Transport and Highways Committee meeting on 21st September 2016, it was resolved that the NCC would in principle compulsorily acquire the land and rights required to deliver the GAR and to progress documents required to make a Side Road Order.
8. Since that approval further work has been undertaken including a re-evaluation of the land required following completion of key detailed design stages and continued negotiations with land owners. As a result, NCC is now in position to progress formally with the making of the Orders.
9. Both statutory procedures are to be undertaken concurrently. Procedurally the SRO needs to be made before the CPO and an indicative programme for key tasks is included in this report. Together, the Orders will ensure the achievement of NCC's objectives for the Scheme and the provision of a new key access road comprising part of a wider package of improvements to the highway network to the east of Nottingham City Centre. In order to ensure proper process specialist advice has been sought throughout.

## **Compulsory Purchase Order**

10. The making and confirmation of the CPO will enable NCC to acquire the land and rights necessary for the construction and maintenance of the Scheme and ensure the necessary improvements are made to the local highway network. In NCC's view, delivery of the Scheme cannot be achieved within a realistic timescale, if at all, without the use of statutory powers to compulsorily acquire the requisite land. The CPO will be made under sections 239, 240, 246, 249 and 250 of the 1980 Highways Act and the Acquisition of Land Act 1981.
11. The land acquired will be for highway purposes to construct the new road and its connections, to divert watercourses and provide water storage to control and attenuate flow, provide landscaping and other ecological measures and mitigation.
12. The CPO schedule of land interests, statement of reasons and notices are currently being finalised in advance of making the Order. The attached drawings 1699-7744 / 00230 (Plans 1 to 5) show the land and rights to be acquired and there is a corresponding schedule that is updated regularly following the receipt of responses to statutory requisitions for Information circulated to affected landowners pursuant to the powers contained in section 16 of the Local Government (Miscellaneous Provisions) Act 1976. Parcels of land to be acquired permanently are shaded pink and land over which rights are to be acquired shaded blue, together these areas make up the Order Land. The numbers shown on the plans are allocated to each plot of land and will correspond with the final CPO schedule. The County Council is in negotiation with relevant landowners and where agreement for sale is reached, the plot of land will be removed from the CPO confirmation.

13. Before the County Council as acquiring authority submits the CPO for confirmation, a notice will be published in a local newspaper and fixed on or near to the land covered by the Order. Individual notices are also served on every owner, leaseholders, tenant, and occupier of land comprised in the CPO and any person who may have right to claim compensation.
14. There is also potential that a Public Inquiry may be generated in respect of compulsory land acquisition if objections are received and not withdrawn. If this is the case the Secretary of State will either arrange for a public local inquiry or – where all the remaining objectors agree to it – arrange for the objections to be considered through the written representation procedure. In the case of a public inquiry, or, during the written representation procedure the County Council will seek to negotiate with objectors. Objections usually fall into three categories, these are:
  - The objector agrees with the purpose of the scheme, but would like to see minor amendments to minimise the impact on them; or
  - The objector agrees with the purpose of the scheme, but feels that it should be located elsewhere; or
  - The objection is to the scheme completely.
15. If no objections are made and the Secretary of State is satisfied that the proper procedure has been observed the CPO may be confirmed, modified or rejected. If objections are considered through an inquiry or by written representation, then the confirmation of the CPO will be done by the Secretary of State following consideration of the Inspector's report.

## **Side Roads Order**

16. The making and confirmation of the SRO will enable NCC to make the changes to side roads affected by the GAR scheme and private means of access to premises needed to facilitate the Scheme. The provisions of the SRO will ensure that adequate, convenient and safe access and egress is available to and from the public highway and private premises, providing means of access for both pedestrians and vehicular traffic using the highway network. Where necessary, alternative means of access will be provided.
17. The SRO will be made under section 14 and 125, and in accordance with Schedule 1, of the Highways Act 1980. The SRO will facilitate the following:
  - Improve, raise, lower, direct or otherwise alter highways;
  - Construct new highways;
  - The stopping up of areas of existing public highway (by reference to the highways map);
  - The stopping up of existing private accesses (as noted below where a highway is stopped up the private access to that highway should also be stopped up in addition);
  - Provision of reasonably convenient alternative means of access; and
  - Diversion of public footpath number 2 (Carlton).
18. Section 14 of the 1980 Highways Act allows highway authorities to rely upon the SRO as being a definitive purpose removing the need to repeat all of the SRO works as individual purposes in the CPO. To depend upon the SRO in this way, the SRO must

have legal foundation evidenced by its making and sealing prior to the making and sealing of the CPO. If confirmed by the Secretary of State, the SRO will facilitate the construction and safe ongoing operation of the Scheme.

19. The SRO schedule, statement of reasons (incorporated with the CPO) and notices are currently being finalised in advance of making the Order. The attached drawings GAR/SRO (Key and Plans 1 to 6) represent the sites of improvements, stopping up and sites of new accesses and the route of new highways (but not the widths or construction details).
20. The SRO is made by the County Council as local highway authority and submitted to the Secretary of State for confirmation. The Secretary of State will not confirm a SRO stopping up access to the public highway unless satisfied that there will be alternative reasonably convenient access to the highway. The SRO plan shows alternative reasonably convenient routes are available or will be provided.

## **Planning**

21. Planning permission was granted for the construction of the GAR on 23<sup>rd</sup> December 2014 (ref. 2014/0915). There are a number of planning conditions related to the GAR that will need to be discharged before the Secretary of State will confirm the Orders. A revision to the planning permission was approved in May 2016, removing the conditions associated with phasing included in the original application.
22. NCC will construct the GAR pursuant to the planning permission granted and will be responsible for the discharge of planning obligations. NCC has been working closely with key landowners as required under these obligations, which has resulted in land acquisition, rights and mitigation works being agreed in principle. These acquisitions will be subject to separate reports to the NCC's Finance and Property Committee.

## **Scheme Details and Objectives**

23. The purpose of this section is to provide members with a summary of the scheme to justify the use of the powers to make the Orders. More details will be provided in the Statement of Reasons (this document sets out the authority's reasons for seeking to acquire the land and rights, and will accompany the Orders). Information is also available within the Transport Assessment that was submitted as part of the application that secured planning permission. Key objectives that will be achieved by the Scheme include:
  - Facilitating the full redevelopment of the Gedling Colliery site;
  - Improving connectivity of the local road network;
  - Reducing traffic flows along the A6211 Arnold Lane corridor thereby reducing congestion in Gedling Village;
  - Delivering an element of a wider package of sustainable transport measures for the area.
24. The scheme as shown on drawing GAR/NCCL01 (Scheme) involves the construction of 3.8km of new single carriageway road that follows a southern route from a new junction with the B684 at Mapperley Plains, running parallel with the A6211 Arnold Lane, through the centre of the former Gedling Colliery site, to the east of which is the Gedling Country Park. From the former colliery site, the GAR will cross a number of fields, Glebe

Farm and a section of the walled garden at Gedling House, which is a Grade II Listed Building, and a section of the Carlton-le-Willows Academy grounds. The route will terminate at a new junction created with the A612 Trent Valley Way, Gedling.

25. The Scheme will incorporate seven key junctions along its length to integrate the new road with the existing highway network and provide accesses to the proposed mixed-use development at the former Gedling Colliery site. These include:
  - Two new traffic signal controlled junctions including pedestrian crossing facilities at either end of junctions with the B684 Mapperley Plains Road and A612 Trent Valley Way that ties into Burton Road and Whitworth Drive;
  - A new 5-arm roundabout connecting GAR with Arnold Lane and the Gedling Colliery site;
  - A new 4-arm roundabout connecting GAR with the Gedling Colliery and future employment site;
  - Two new T-junctions providing links with the northern and southern sections of Lambley Lane with the GAR;
  - A new 3-arm mini-roundabout on Lambley Lane connecting the southern section of Lambley Lane to GAR, with the option of a fourth arm to serve potential development land immediately to the east of Lambley Lane (the land required for the fourth arm is in NCC ownership).
26. In addition, there is a requirement for a number of private access points off the GAR to serve land, property and drainage balancing ponds. A new 3.0m wide shared use footway / cycleway will be provided along the entire length of GAR with signal controlled TOUCAN crossings located at key points to assist pedestrian and cycle crossing movements. There is also a requirement to divert an existing public footpath across the GAR (Public Footpath Number 2 – Carlton).
27. The road will have a 40mph speed limit except for the section immediately adjacent the Gedling Colliery site which will have a lower 30mph limit, the route will also have street lighting along its entire length.
28. A principle objective of the GAR is to facilitate the redevelopment of the Gedling Colliery site as proposed in the Broxtowe, Gedling and Nottingham City Aligned Core Strategies. The GAR is an essential component in the planning of this part of Gedling Borough, providing access to land to facilitate major residential and employment development proposals incorporating community facilities and amenities including the Gedling Country Park.
29. The residential development on the former Gedling Colliery / Chase Farm site will be delivered in three phases. Keepmoat (housing developer) submitted a full planning application (with the first two phases applied for in detail and the third phase in outline only) that GBC planning committee resolved to grant planning permission for in May 2016. This was subject to completion of an agreement containing planning obligations entered into pursuant to the powers in Section 106 of the Town and Country Planning Act 1990 (the purpose of this is to secure provision for public health, libraries, education, sustainable transport and public transport). This agreement is now completed enabling the issuing of the planning permission. The delivery of the first phase (1a) includes 315 dwellings and it is intended that this phase will start on site during early Spring 2017 and this is the maximum number of dwellings that can be constructed without the GAR being constructed. The second phase (1b) will take the

number of dwellings up to 506. The final phase (2) has outline permission and requires additional planning approvals through reserved matters and will see the site completed with almost 1,000 dwellings and associated facilities in place.

30. The GAR will also provide a 'bypass' around Gedling that is on the eastern side of the conurbation of Nottingham, providing improved connectivity to the wider local road network. In doing so, GAR will ease traffic congestion on other roads surrounding the Gedling Colliery site that at present are either at or nearing capacity. It is forecast that the GAR will reduce traffic flows on the current A6211 (Arnold Lane) corridor in all scenarios tested as traffic reassigns to make use of the new route. The forecast flow reductions are expected to have an overall beneficial effect on road safety along the current A6211 corridor and the operation of existing junctions will also benefit from the general reduction in traffic with fewer delays and queues experienced in the peak hours. Arnold Lane will be declassified upon completion of the GAR which will become the A6211.
31. A range of complementary traffic management measures will be developed to effectively integrate the road Scheme and redevelopment proposals into the existing transport network. It is anticipated that some complementary measures will be delivered in parallel with the road Scheme, whereas others will be considered following a period of monitoring. A reduction in the speed limit along Arnold Lane will be implemented once the GAR is open and Arnold Lane realigned to the new 5-arm roundabout. Other measures may include a vehicle weight restriction along Arnold Lane, pedestrian crossing facilities and other sustainable transport measures to integrate new infrastructure into wider cycling and pedestrian routes.
32. The operation of the proposed junctions on GAR has been tested and demonstrated to operate within acceptable parameters at the 2034 design year (15 years post completion) assuming full redevelopment of the Gedling Colliery site. The proposed junction layouts are therefore considered appropriate to accommodate forecast traffic flows.
33. GAR is also part of a wider package of sustainable transport measures for the area. There is provision for non-motorised users by means of a shared footway / cycleway facility for pedestrians and cyclists along the entire length of the Scheme. Pedestrian crossing points will be provided to enable the public to access land to the Gedling Country Park.
34. The GAR will also be complemented by the proposals of Nottingham City Council for a series of bus based improvements along a 'southern growth corridor' linking Beeston and the Boots Enterprise Zone on the west of Nottingham to Gedling in the east, including additional bus services and proposed bus priority measures along the A612 through Colwick and Netherfield. The Section 106 Agreement for the Gedling Colliery site includes a £600,000 commuted sum for bus service provision based on residential occupancy to ensure a suitable, affordable and sustainable service is provided to complement and link into the southern growth corridor.
35. Overall, provision of GAR is considered to be beneficial in terms of impacts on the local highway network and acceptable on transport grounds.

## **Funding Background**

36. The total project cost is estimated at £40.899 million, split £7 million for land and £33.899 million for design and construction of the GAR. A cost summary for the design and construction of the whole road was previously reported to Committee on 21<sup>st</sup> September 2017 and summarised in table 1. The construction costs produced include a contingency set at 5%, inflation is based on current BCIS (Building Cost Information Service) All In Tender Prices. It should be noted that these costs have been developed using the best information available at the time of review.

**Table 1: Scheme Costs**

<b>Costs (millions)</b>	<b>Comments</b>
£26.427	Construction costs (2016 prices)
£1.581	Diversion works to services during main construction works
£0.273	Diversion works to services outside of main construction works (including diversion of gas services already done on Arnold Lane)
<b>£28.281</b>	<b>Construction Total</b>
£1.755	Inflation (assumed 7.35%) – based on current BCIS All In Tender Prices
£0.061	Advanced Works
£1.273	Contingencies (5%) on construction costs and services during construction
£0.478	Testing (2%) including ground investigation works
£2.051	Design, Project Management and Site Supervision
<b>£33.899</b>	<b>Design and Construction Total</b>
£7.000	Land & Rights Acquisition, Compulsory Purchase Order, compensation (including blight and Part 1 claims) and costs relating to Unilateral Undertaking
<b>£40.899</b>	<b>TOTAL PROJECT COSTS</b>

37. A funding package has been assembled totalling the £40.899 million required to deliver GAR. Details of the funding agreements were reported to and approved at the Finance and Property Committee meeting on 19<sup>th</sup> September 2016.

38. The Gedling Colliery site now has approvals from the HCA that will enable all legal agreements to be completed and the main construction works to start on the housing development. It is anticipated that Keepmoat will start advanced work on the former Gedling Colliery site under licence during March 2017. This key milestone will enable the funding agreements linked to the GAR to be signed by all parties. The funding stream contributed to by each development partner is as follows:

- Land and Enabling Works
  - HCA - £7.17 million;
- Construction (including design)
  - NCC Capital - £5.4 million;
  - D2N2 - £10.8 million (outline business case approval obtained, full approval required as discussed below);

- Housing Developer (Keepmoat) - £17 million including Community Infrastructure Levy (CIL) liabilities of £4.488 million via GBC;
- Section 106 contributions - £0.529 million (£0.436 from Teal Close development).
  - Total: £40.899 million

39. The following sections provide a summary on each of the main funding strands to provide an up to date position and links to the CPO. The agreements that require completion prior to making the CPO are:

- Variation to the Enabling Works agreement with the HCA; and
- Payment and Escrow Account with the HCA and the developer (Keepmoat); and
- Deed of Agreement for CIL Funding with GBC.

40. Each of the agreements seek to protect NCC from significant risk through conditions linked to planning, statutory procedures, timescales and funding. The completion and execution of these agreements are required prior to making of the CPO to demonstrate that funding is in place to deliver GAR. No applications for draw-down of funding from the Payment and Escrow Account or Deed of Agreement for CIL funding can be made until the CPO is confirmed by the Secretary of State and construction contracts are procured and in place by NCC. The CPO would not be implemented until the funding agreements were ready to go unconditional and all conditionality would be addressed accordingly prior to substantial liability being triggered. Costs of the scheme up until this point will be met from NCC Capital (construction / design) or through the HCA Grant Funding (land acquisitions / CPO).

## Funding - Land

### 41. Homes and Communities Agency (Grant Funding Enabling Works)

This agreement provides a maximum capped contribution of £7 million from the HCA for the acquisition of land required to deliver GAR. NCC can draw-down funds for land acquisitions and cost incurred in preparing the Orders under this existing agreement. The agreement is currently being varied to reflect the planning permission granted including the requirements contained in the section 106 Unilateral Undertaking, however this does not affect the ability to draw-down funds for land acquisitions or costs incurred on the Orders.

42. The revised agreement includes a range of qualifying expenditure including costs associated with Orders and any acquisition by agreement. Work has been undertaken to validate land acquisition costs and whilst these are subject to potentially fluctuating land values it is considered that this element of work can be delivered within the funding available.

## Funding - Construction

43. The funding agreements linked to the construction works (apart from the NCC Capital) have conditions attached as pre-requisites. The key conditions that need to be discharged prior to the main construction works commencing are:

- Confirmation that all funding is in place; and
- Confirmation of the CPO from the Secretary of State; and

- Works contracts in place for the construction of the GAR.

#### 44. **Nottinghamshire County Council – County Capital**

At its Full Council meeting in February 2014 NCC resolved to incorporate funding of £5.4 million into its capital programme to support GAR split 50:50 into the 2017/18 and 2018/19 financial years. Currently part of this funding is being brought forward to facilitate detailed design, procurement and site investigation works which enable the road to be delivered subject to the completion of statutory processes. The latest profile for NCC funding is £95,000 in 2016/17, £500,000 in 2017/18, £800,000 in 2018/19 and £4.005 million in 2019/20. Any further changes to this profile including additions from external funding will be included in capital budget monitoring reports taken to the Finance and Property Committee and reviewed annually as part of the budget review. There are no specific requirements in the funding stream linked to the CPO.

#### 45. **D2N2**

At its board meeting of July 22<sup>nd</sup> 2013 the D2N2 Local Transport Body (LTB) agreed to allocate £10.8 million towards the cost of the GAR from the £31.2 million available to it for that period. The GAR is one of only six schemes supported by the LTB Board across the D2N2 area and is the largest single scheme it is supporting representing 35% of the allocation.

46. The scope for the Full Business Case (FBC) has been agreed and final reports are being prepared before formal submission later this year, currently programmed for April 2017. The County Council will be seeking conditional FBC Approval during 2017 and this is expected in advance of any CPO inquiry. The approval would then become unconditional upon demonstrating that all land has been acquired either by negotiation or through confirmation of a CPO, which would then facilitate the draw-down of funding.

#### 47. **Payment and Escrow Account with the HCA and the developer (Keepmoat)**

The parties to this agreement include the HCA, NCC, Keepmoat Limited, Keepmoat Homes Limited and their legal representatives. The agreement facilitates the deposit of £17 million from Keepmoat into an Escrow Account towards the delivery of the GAR. This is a requirement of the development agreement between the HCA and Keepmoat. Payments will be made in instalments into the Escrow account and the full £17 million be paid in full by the 1<sup>st</sup> of February 2020 which is largely in advance of the housing development, but before the planned end date for the road construction. Monies paid into the Escrow account will be drawn-down by NCC in accordance with the agreement as the GAR is delivered. Conditions as pre-requisites to the draw-down funding include confirmation of the CPO and a requirement for contracts in place to deliver the GAR.

48. The value of £17 million includes a maximum value of CIL liability for the three phases estimated at £4,448,120 (to take into account indexation). Any additional CIL liability over and above this amount will be dealt with outside of the Escrow account and is not the responsibility of NCC.

49. In addition, the developer will fund the Section 106 Agreement with contributions totalling almost £5.1 million and covers a range of items. Those specific to NCC include land and a £3.6 million contribution towards a new primary school plus contributions to public health, libraries, public transport and sustainable transport.

50. It is likely that due to timings of the Gedling Colliery site that the CIL liability for Phase 1a will be paid by the developer to GBC prior to construction contracts being in place to

deliver the GAR. Repayment of Phase 1a CIL monies back to NCC by GBC is to be covered in a separate agreement intended to be entered soon into between the two authorities and before making of the Orders.

**51. Community Infrastructure Levy – Gedling Borough Council**

The Community Infrastructure Levy (CIL) is a method for collecting financial contributions from developers towards the provision of infrastructure needed as a result of development. A revised charging schedule was issued by GBC after consultation following the Community Infrastructure Levy (Amendment) Regulations 2014 coming into force and a review of housing supply in the Aligned Core Strategy. The revised charging schedule sets out where CIL would be levied and how much will be charged, it also included the Regulation 123 list. The Regulation 123 list provides for contributions from CIL received by GBC to be allocated to the GAR, Gedling Colliery Country Park visitors centre and secondary school contributions at Gedling Colliery and Top Wighay Farm.

52. The Deed of Agreement to be entered into for CIL Funding between NCC and GBC has a value of £4.448 million which is the capped CIL figure for the purposes of the agreements. The agreement will facilitate the payment of CIL from GBC to NCC for infrastructure and costs directly incurred on the construction of GAR when required. The CIL contributions have GBC Full Council approval and the final terms of the Deed of Agreement are being agreed. The agreement is linked to the CPO as NCC will be unable to enter into a contract for the main construction works until confirmation of the CPO has been confirmed.

**53. Teal Close – section 106**

This site is not subject to CIL as planning permission was granted before GBC adopted its CIL charging schedule. However, the Section 106 Agreement includes a contribution of £436,000 towards the construction of the GAR. The site currently has outline planning permission and reserved matters are due to be submitted by the developer and once these are approved would enable funding to be obtained subject to contracts being in place to deliver the GAR. There is considered to be sufficient funding available in the event that this development does not proceed for any reason.

## **Update on Land Acquisitions**

54. Due to the number of land interests involved it is considered that it will be necessary to make the CPO in order to deliver the scheme. Whilst every endeavour is made to acquire land via negotiation, in order to ensure scheme delivery, it is standard practice that CPO powers are progressed simultaneously with land acquisition. In addition, to reduce the amount of land acquisitions required, a review of the design resulted in a reduction of land parcels needed to deliver the GAR.

55. Letters were sent to all land / lease holders in August 2016 to provide an update on the possibility of a CPO, stating that wherever possible rights will be acquired by negotiation and agreement and providing details of key contacts with whom to discuss details of the Scheme. This has prompted contact from a number of key land owners and detailed discussion / negotiations are underway.

56. In January 2017, Land Interest Questionnaires (LIQs) were sent out to all affected parties. To date, there has been a return rate of 76.6%, which is considered high; this provides the opportunity to ensure the CPO schedule is accurate and up to date.

Currently there are 53 plots of land to be acquired permanently and 28 plots where rights of access are required to facilitate construction and maintenance of the GAR. Plots are currently in a mixture of public and private sector ownership as summarised in table 3, and does not include land that forms part of the existing public highway. For information, the plots under third party ownership comprise 14 individual landowners.

**Table 3: Number of Land Parcels**

Ownership	Number of Land Parcels		
	Land to be Acquired	Rights to be Acquired	Total
Third Party	21	13	34
Homes and Communities Agency	8	3	11
Gedling Borough Council	8	7	15
Nottingham City Council	1	0	1
The Crown Estate	1	0	1
Nottinghamshire County Council	5	1	6
Unknown	9	4	13
<b>TOTAL</b>	<b>53</b>	<b>28</b>	<b>81</b>

**57. NCC Land**

This is land owned by NCC within the planning boundary that has formed part of the safeguarded route for the GAR. This land will be appropriated for highway purposes.

**58. HCA Land**

The enabling works agreement details the transfer of land owned by the HCA to NCC that is required to deliver the road and meet obligations under the Unilateral Undertaking. Negotiations are underway to include the areas of land where rights are to be acquired in a voluntary agreement, once agreed then these can be removed from the CPO schedule. The transfer of land from the HCA will take place on confirmation of the CPO and the enabling works agreements includes access to HCA land under licence to carry out advanced works if required, subject to submission of method statements and risk assessments.

**59. Gedling Borough Council**

Discussions are underway with GBC to acquire all land and rights required for GAR by agreement. When this acquisition is finalised these plots are likely to be removed from the CPO schedule. However, it is important to note that at this stage there are two plots of land that fall within Gedling Country Park and therefore contain open space (within the definition of ‘special category land’ in section 19 of the Acquisition of Land Act 1981 (1981 Act)).

Accordingly, in order for the CPO to be confirmed and compulsory purchase powers be acquired over the “special category land” plots, the CPO will be subject to special

parliamentary procedure unless the Secretary of State provides a certificate under section 19 of the 1981 Act indicating his satisfaction that either:

- Exchange land is being given which is no less in area and equally advantageous as the land taken (section 19(1)(a) of the 1981 Act);
- That the land is being purchased to ensure its preservation or improve its management (section 19(1)(aa) of the 191 Act); or
- That the land is 250 sq. yards or less in area or is for the widening and/or drainage of an existing highway and that the giving of exchange land is unnecessary (section 19(1)(b) of the 1981 Act).

Works at this location are required to re-profile the existing ground to be sympathetic with the Gedling Country Park and GAR. As noted above it is expected that these plots will be removed from the CPO schedule once agreement is reached with GBC prior to confirmation of the CPO.

#### **60. Listed Buildings**

Listed Building Consent for the works to the walled garden at Gedling House, a Grade II Listed Building of special historic or architectural interest, was granted by GBC on 12 December 2014.

#### **61. Land Ownership Unknown**

The County Council has commissioned a Land Referencing Agent (TerraQuest) to act on its behalf to research land ownership and undertake Land Referencing work. TerraQuest are making enquiries that will help to inform the County Council's understanding of the third-party interests in land that will be affected by GAR including determination of ownership that is currently unknown.

62. Where land remains unknown ownership, NCC must make diligent inquiries into the land's ownership, such inquiries to include examining the electoral roll and reviewing GBC's housing department's records.

63. If the owner of land remains untraced, a specific form of statutory notice must be fixed in a prominent position on the relevant land when the CPO is made.

64. If the CPO is confirmed and the owner of the land is still unknown, a further notice of confirmation must be affixed on the land.

65. If the owner remains untraced the land will vest in NCC when NCC execute a general vesting declaration that includes the land or when NCC serve Notice to Treat and Notice of Entry on the land. Again, Notices will need to be affixed in a prominent position on the relevant land.

### **Consultation**

66. The HCA were the planning applicant for the GAR and carried out extensive consultation during the application process with the opportunity being given for interested parties to make representations regarding the proposals. Statutory Consultees were also contacted in the course of undertaking the Environmental Impact Assessment by the HCA's representatives and as part of the pre-application process and feedback has been disseminated. Comments received

were addressed and incorporated in the EIA and planning application process where possible.

67. Public exhibitions formed the main element of the consultation strategy for the planning in order to enable as many local people as possible to view the plans and have opportunity to make comments and discuss any concerns with members of the team. 10,000 properties in the area were sent a leaflet advising of the exhibitions. In total three events were held in June and July 2014 that were very well attended with approximately 1,000 people viewing the proposals over the three events. Approximately 200 written responses were received. Overall, there was considerable support for the proposals, with many people recognising the need for, and benefits of, the new road.
68. A number of issues and queries were raised, the main concerns relate to the potential increases in traffic in Mapperley Plains, the close proximity of the new road to existing properties, issues relating to the selected route and the design and arrangement of junctions. Noise and pollution were also raised as concerns, together with the impact on the local environment and use of greenfield land. Comments were considered in the report presented to the GBC's planning committee on 27<sup>th</sup> November 2014. GBC subsequently resolved to grant planning permission
69. Objections can be raised following the making of the Orders and these will be considered by the Secretary of State, including at a public inquiry should the Secretary of State determine to hold one in connection with the Orders. Those directly affected by the Orders will be entitled to statutory compensation in accordance with the Compensation Code.
70. Throughout the process it is encouraged that any interested party contacts the County Council or Via East Midlands with queries relating to the GAR.

## Timescales

71. The indicative timetable for the next key steps is set out below. These are challenging targets and whilst negotiations are underway to obtain land by agreement it is expected that a CPO will be required to obtain to acquire all the residual land and rights necessary for the construction and maintenance of the Scheme. This means the key milestones are the making of the Orders and subsequent confirmation of the Orders by the Secretary of State. The timing of these depend upon objections received and if a public inquiry is required.
- 16<sup>th</sup> March 2017 - Nottinghamshire County Council Approvals
    - Transport and Highways – Approve the making of the Orders including confirmation of land requirements
  - Ongoing to April 2017
    - D2N2 Funding Full Business Case (Preparation of documentation)
    - CPO and SRO Process (Preparation of Orders)
    - Procurement - Contractor selection from framework for Early Contractor Involvement
  - April 2017
    - **CPO and SRO Process (Making of the Orders)**
    - Submission of D2N2 Funding Full Business Case (FBC)

- May 2017
  - CPO and SRO Process - Notification and Publicity of the Orders and includes period for comment from interested parties
- June 2017
  - CPO and SRO Process - Consideration / Review of Objections
- August 2017
  - D2N2 Funding FBC - Obtain Condition Approval, will be dependent upon CPO confirmation
- Summer 2017
  - Discharge of pre-commencement of planning conditions
- October 2017
  - CPO and SRO Process - Public Inquiry if required (this is the earliest anticipated time as it is usually 4 to 6 months after making of CPO) and will be dependent on allocation of an Inspector
  - Completion of target cost negotiations for construction works
- December 2017
  - GAR advanced works
- January 2018
  - **Orders confirmed by Secretary of State – (this is an estimate as depends upon report from Inspector if public inquiry required))**
- February 2018
  - Completion of Special Parliamentary Procedures (it is anticipated that this will not be required, estimated date)
  - Award of works package to contractor for construction of GAR
- Spring 2018
  - GAR onsite (main contract works)
- Summer 2020
  - GAR complete – Spring 2020

## Circular Guidance

72. Although not specifically related to highways CPOs the Circular entitled “*Guidance on Compulsory Purchase Process and The Crichel Down Rules for the disposal of surplus land acquired by, or under the threat of, compulsion*” issued in October 2015 confirms that “compulsory purchase powers are an important tool for local authorities to use as a means of assembling land needed to help deliver social and economic change. Used properly they can contribute towards effective and efficient urban regeneration, the revitalisation of communities and the promotion of business – leading to improvements in quality of life”.
73. Making the CPO in respect of the current proposals for the Scheme would clearly support this approach given the benefits that will accrue should the Scheme be delivered. As set out above there are clear problems with the highway network around Gedling village and a failure to deliver the Scheme will exacerbate current problems and prevent the wider redevelopment of the Gedling colliery site.
74. The benefits identified cannot be achieved without delivery of the Scheme and this requires the land identified to come forward for development. Whilst negotiations to acquire the land by agreement will continue, the acquisition cannot be guaranteed within the program timeframe (if at all) without the support of CPO powers.

75. Department of Transport Circular 02/97 remains the relevant guidance in respect of CPOs for major road schemes. It provides that the Secretary of State for Transport must be satisfied in every case that the land included within the CPO can reasonably be regarded as required for the purposes of the acquisition as stated in the CPO. Where the Scheme is one for the construction and improvement of highway, this will normally mean that the only land to which the CPO should relate will be land falling within the highway as newly constructed or improved.
76. The Scheme has been carefully designed to minimise the amount of land that needs to be acquired and where working space has been identified this has been kept to a minimum. The CPO and CPO schedule therefore conform to this guidance.
77. Paragraph 2 to the Circular also identifies that the Secretary of State would “always wish to be sure that Scheme for which he was authorising the compulsory purchase of land would go forward as proposed in the Order. Consequently, it is his practice not to confirm CPO until he is satisfied that the planning permission of aspect of the Scheme to which the Order relates has been granted”. In this case the works underpinning the Scheme benefit from planning permission. This may be subject to variations which the local planning authority are supportive of in principle. There is no realistic planning impediment to the Scheme being delivered.
78. Department of Transport Circular 01/97 contains the guidance on the SRO procedure. This Circular confirms that where planning permission is required for a classified road or its side road highway works, the Secretary of State for Transport will not confirm an SRO until the planning application has been determined. The position therefore is the same as that for the CPO however as noted there is no realistic planning impediment to the Scheme being delivered.

## **Statutory Powers of the Local Authority**

79. A CPO is required for the Scheme which will, subject to Confirmation by the Secretary of State for Transport, empower NCC to acquire land and rights required for the construction and maintenance of GAR and associated works, and to enable the new road to be linked into the existing highway network pursuant to the SRO.
80. The CPO is made under sections 239, 240, 246, 249 and 250 of the 1980 Act and the 1981 Act. The powers in the Act enable the NCC to acquire land compulsorily and acquire rights compulsorily for the following purposes: -
- (i) the construction of new highway and the improvement of existing highway;
  - (ii) to carry out works authorised by an order under section 14 of the 1980 Act;
  - (iii) use of land in connection with the construction of a highway and with the carrying out of works authorised by an order under section 14 of the 1980 Act;
  - (iv) to mitigate the adverse effect of the existence or use of the highway on its surroundings; and
  - (v) for the acquisition of new rights required in association with the Scheme.
81. An SRO is required for the GAR Scheme to enable NCC to exercise powers under section 14 and 125 of the Highways Act 1980. Section 14 authorises the Council, in relation to the classified road, to:

- (i) to stop up, improve, divert, raise or lower or otherwise alter a highway that crosses or enters the route of the road or is or will be otherwise affected by the construction of the road; and
- (ii) to construct a new highway for purposes concerned with any such alteration as aforesaid or for any other purpose connected with the road or its construction and to close after such period as may be specified in the Order any new highway so constructed for temporary purposes.

82. Section 125 of the Act provides that any order made by the Council under section 14 may authorise the Council to:

- (i) stop up each private means of access to premises adjoining or adjacent to land comprised in the route of the classified road, or forming the site of any works authorised by the order; and
- (ii) to provide new private means of access to any such premises.

83. Pursuant to section 14(6) of the 1980 Act no order authorising the stopping up of a highway shall be made or confirmed by the Secretary of State unless he is satisfied that another reasonably convenient route is available or will be provided before the highway is stopped up. For the GAR Scheme, a reasonably convenient alternative route is either available or is being provided in all instances where stopping up is proposed.

84. Section 125(3) of the 1980 Act provides that no order authorising the stopping up of a means of access to premises shall be made or confirmed by the Minister unless he is satisfied that no access to the premises is reasonably required or that another reasonably convenient means of access to the premises is available or will be provided. For GAR, a reasonably convenient alternative means of access is either available or is being provided in all instances where stopping up of private means of access is proposed.

85. In determining whether to confirm the CPO, the Secretary of State will need to be satisfied that:

- There are no impediments to delivery of the Scheme underpinned by the CPO;
- Land included in the CPO can reasonably be regarded as required for the purposes of the acquisition as stated in the CPO;
- The statutory procedures have been correctly followed;
- The purposes for which the CPO is made justify interfering with the human rights of those with an interest in the land affected;
- There is a compelling case in the public interest for confirmation of the CPO; and
- Officers consider that the above requirements are satisfied and will be met.

## **Other Options Considered**

84. There have been numerous options surrounding the alignment and route details which have been considered through the design and planning process. A collaborative approach has been taken to the project and key partners have met regularly throughout the planning process and this has been formalised into revised governance arrangements for the Gedling Housing Zone delivery. Extensive consultation has been undertaken on the GAR.

85. The detail in each legal agreement has been through various iterations as a result of ongoing negotiations and is designed to reflect the interdependencies between the projects and meet the needs of all parties, whilst meeting all relevant financial and legal requirements. For NCC this has been done to protect the authority and minimise risk through pre-requisites that have to be met and link with key milestones to provide project assurance as the project develops.

### **Reason/s for Recommendation/s**

86. The GAR will enable a key development site to be realised and unlock much needed development land. The former Gedling Colliery / Chase Farm site is identified as an area of future housing development in the Aligned Core Strategy (ACS), as it is a key strategic site on the urban edge of Nottingham and viewed as a priority for GBC. The site has a status of strategic location.

87. The delivery of GAR will also complete the long-awaited bypass of Gedling village and achieve strategic transport objectives in keeping with the Nottinghamshire Local Transport Plan.

88. It is considered that there is a compelling case in the public interest for making the Orders, and that the benefits of the Scheme justify interference with private property rights. The legal and policy test set out above are considered to be satisfied.

### **Statutory and Policy Implications**

89. This report has been compiled after consideration of implications in respect of crime and disorder, finance, human resources, human rights, the public sector equality duty, safeguarding of children and vulnerable adults, service users, sustainability and the environment and ways of working and where such implications are material they are described below. Appropriate consultation has been undertaken and advice sought on these issues as required.

### **Finance Implications**

90. The delivery of both the GAR and Gedling Colliery development are linked as a result of the complex funding arrangements as set out in this report.

91. NCC will ensure that all conditionality aspects are addressed before the CPO is implemented and substantial liability under construction contracts is triggered. Before the Secretary of State can confirm any CPO required, they must first be satisfied that the Scheme is fully funded.

92. Based on current Scheme estimates and work previously undertaken the Scheme is deliverable with sufficient funding streams to cover anticipated costs. Details of financial implications and risk were included and approved in the Finance and Property Committee meeting on 19<sup>th</sup> September 2016.

### **Human Rights Implications**

93. The Human Rights Act 1998 incorporated the European Convention on Human Rights (Convention) into UK Law. The Convention includes provisions which aim to protect the rights of the individual (including companies and similar bodies). In resolving to make the CPO and SRO the Council must consider the rights of the property owners affected by the Orders, should they be confirmed generally and in particular, under the following Articles of the Convention:

Article 1 of the First Protocol

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

Article 8 – Right to respect for private and family life

1 Everyone has the right to respect for his private and family life, his home and his correspondence.

2 There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

94. It is acknowledged that the compulsory acquisition of land required to deliver the Scheme could engage the above Articles and amount to an interference with the human rights of those with an interest in the relevant land. In this instance, NCC considers that there is a compelling case in the public interest for the compulsory acquisition of the land required for the Scheme that outweighs any interference with such rights and therefore the use of compulsory purchase powers in this matter is proportionate. Without the use of these powers, it is possible that all of the land necessary to deliver the Scheme may not be made available within a reasonable timescale, which would compromise the delivery of GAR and the extensive benefits for both travellers and local residents that the Scheme provides.

95. Furthermore, the compulsory purchase process clearly provides for those affected to have a right to object to any Orders being confirmed and this objection will be considered by an independent inspector appointed by the Secretary of State for Transport. Any objection may also be considered at a public inquiry held to consider the confirmation of the Orders. Notwithstanding this, any person affected by the proposed Orders will be entitled to compensation pursuant to and subject to the Compensation Code.

## **RECOMMENDATION/S**

It is **RECOMMENDED** that Committee:

- 1) Authorise the making of a Compulsory Purchase Order under sections 239, 240, 246, 249 and 250 of the Highways Act 1980 and the Acquisition of Land Act 1981 required to compulsorily acquire land and rights within the site shown edged red on the attached

drawings 1699-7744 / 00230 (Plans 1 to 5) that are needed to deliver the Gedling Access Road;

- 2) Authorise and delegate authority to the Corporate Director, Place in consultation with the Chair (or Vice-Chair) of Transport and Highways Committee to:
  - a. Take all necessary steps to secure the making, submission to the Secretary of State for confirmation and implementation of the Compulsory Purchase Order including (but not limited to) drafting and publishing the Statement of Reasons, the publication, advertisement, notification and service of all notices, the investigation of and response to objections, and the presentation of the NCC's case at any public inquiry;
  - b. Negotiate and acquire interests in land and new rights set out in the Compulsory Purchase Order either by agreement or compulsorily; and
  - c. Make minor amendment, modifications and deletions to the plan should this be considered appropriate.
- 3) Authorise the making of Side Roads Orders under section 14 and 125, and in accordance with Schedule 1, of the Highways Act 1980 for highway improvements and modifications needed for the construction of the proposed new highway, Gedling Access Road on the attached drawings GAR/SRO (Key and Plans 1 to 6); and
- 4) Authorise and delegate authority to the Corporate Director, Place in consultation with the Chair (or Vice-Chair) of Transport and Highways Committee to:
  - a. Take all necessary steps to secure the making, submission for confirmation and implementation of the Side Roads Order including (but not limited to) drafting and publishing the Statement of Reasons, the publication, advertisement, notification and service of all notices, the investigation of and response to objections, and the presentation of the Council's case at any public inquiry; and
  - b. Make minor amendment, modifications and deletions to the plan should this be considered appropriate.

**Adrian Smith**  
**Corporate Director – Place**

**For any enquiries about this report please contact: Mike Barnett 0115 977 3118**

### **Constitutional Comments (SLB 21/02/2017)**

96. The recommendations fall within the remit of the Transport and Highways Committee by virtue of their terms of reference.

### **Financial Comments (PH 24/02/2017)**

97. The financial implications are set out in paragraphs 90 to 92 in the report.

## Background Papers and Published Documents

Except for previously published documents, which will be available elsewhere, the documents listed here will be available for inspection in accordance with Section 100D of the Local Government Act 1972.

- Finance and Property Committee Report dated 24<sup>th</sup> March 2014  
Gedling Access Road, Scheme Development and Funding Agreements
- Report to County Council dated 27<sup>th</sup> February 2014  
Capital Programme 2014/15 to 2017/18
- Greater Nottingham (Broxtowe Borough, Gedling Borough, Nottingham City) – Aligned Core Strategies Part 1 Local Plan – Adopted September 2014
- D2N2 Local Growth Fund – Local Assurance Framework – Available at:
- [http://www.d2n2lep.org/write/Local\\_Assurance\\_Framework\\_final\\_version.pdf](http://www.d2n2lep.org/write/Local_Assurance_Framework_final_version.pdf)
- Finance and Property Committee Report dated 19<sup>th</sup> September 2016  
Gedling Access Road - Scheme Update and Funding Agreement
- Transport and Highways Committee Report dated 21<sup>st</sup> September 2016  
Gedling Access Road – Scheme Update, Compulsory Purchase Orders and Side Roads Orders

## Electoral Division(s) and Member(s) Affected

Arnold North	Councillors Pauline Allan and Michael Payne
Arnold South	Councillors Roy Allan and Muriel Weisz
Carlton East	Councillors Nikki Brooks and John Clarke
Carlton West	Councillors Darrell Pulk and Jim Creamer
Calverton	Councillor Boyd Elliott