

CITY COUNCIL - 11 OCTOBER 2010

REPORT OF THE PORTFOLIO HOLDER FOR TRANSPORT AND AREA WORKING

NOTTINGHAM EXPRESS TRANSIT SYSTEM ORDER 2009 – APPLICATION FOR AN AMENDING ORDER AND EXCHANGE LAND CERTIFICATE IN RESPECT OF OPEN SPACE LAND PROPOSED TO BE ACQUIRED COMPULSORILY

1 SUMMARY

- 1.1 At the City Council meeting held on 12 July 2010, approval was given for the submission of an application for a Transport and Works Act Order (TWAO) to amend the 2009 Nottingham Express Transit System Order to enable the compulsory acquisition of open space land in Chilwell owned by the County Council. Approval was also given to apply for a certificate under s.19 of the Acquisition of Land Act (“an Exchange Land Certificate”) in relation to the TWAO which would certify the suitability of the exchange land to be provided.
- 1.2 The Exchange Land Certificate application was lodged with the Secretary of State for Communities and Local Government on 13 July 2010, with the TWAO application submitted to the Secretary of State for Transport on 2 August 2010. Now that the applications have been submitted, the Council is required by section 239 of the Local Government Act 1972 to meet to decide whether or not to confirm its decision to make the applications. Given that the circumstances leading to that resolution have not changed, it is recommended that Council confirm the resolution made at the meeting on 12 July 2010 to promote the TWAO and Exchange Land Certificate applications.

2 RECOMMENDATIONS

It is RECOMMENDED that the City Council confirms, by a majority of the Council, as required by section 239 of the Local Government Act 1972, its decision taken on 12 July 2010 which was as follows:

- (1) that an application be made by the Council for an Order (“the Amending Order”) to be made by the Secretary of State for Transport under the Transport and Works Act 1992 to amend the Nottingham Express Transit System Order 2009 so that (i) the City

Council can acquire compulsorily open space land in Chilwell required for the purposes of NET Phase Two (“the Open Space Land”); (ii) the exchange land (the “Exchange Land”) intended to be provided in place of the Open Space Land (and other land) has to be laid out to the satisfaction of Broxtowe Borough Council; and (iii) the Exchange Land will vest in The Nottinghamshire County Council rather than in Broxtowe Borough Council;

- (2) that an application be made by the Council to the Secretary of State for Communities and Local Government for a certificate to be given as to the suitability of the Exchange Land (“Exchange Land Certificate”) under section 19 of the Acquisition of Land Act 1981;
- (3) That subject to the above, the Director, NET, in consultation with the Portfolio Holder for Transport and Area Working, may take all such steps as may be necessary to carry the above resolutions into effect, including all those steps required for the Council to apply for and thereafter promote its applications for the Amending Order and an Exchange Land Certificate, including dealing with any objections to the applications, entering into agreements or commitments in relation to them and conducting any public inquiries that may be called; and
- (4) That the corporate seal of the City Council may be affixed to any documents required to be sealed in connection with the applications for and subsequent promotion of the Amending Order and an Exchange Land Certificate.

3 REASONS FOR RECOMMENDATIONS (INCLUDING OUTCOMES OF CONSULTATION)

- 3.1 At the Council meeting on 12th July 2010, a report was considered on promoting Transport and Works Act Order and Exchange Land Certificate applications for NET Phase Two.
- 3.2 The report outlined the reasons for promoting the applications, described the open space to be acquired and the replacement land that is being offered in exchange, and detailed the administrative procedures and timescales for the applications, and consultations undertaken. The background to the project was described, and an outline of the application documentation was given.
- 3.3 The report also said that all major transport schemes not yet at the

Government's Full Approval stage will be reviewed as part of the Comprehensive Spending Review (to report in the Autumn), and that NET Phase Two will be part of this review. The Secretary of State for Transport had issued a statement that, in general, applications for Orders for new schemes would not be processed before those general funding decisions had been made. Nonetheless, it was considered prudent to continue to take all appropriate action towards completion, including the submission of the proposed applications, to ensure there is no programme delay.

4 SUBSEQUENT DEVELOPMENTS

- 4.1 The Exchange Land Certificate application was lodged with the Government Office for London, acting on behalf of the Secretary of State for Communities and Local Government, on 13 July 2010. A period within which objections or representations can be made by any interested party will take place if the Secretary of State responds to the application stating that he intends to give the certificate.
- 4.2 The TWAO application was lodged with the Secretary of State for Transport on 2nd August 2010. Notices were served on the application date on all affected parties and the proposed TWAO and associated documents were made available for public inspection. This period lasted six weeks (finishing on 13 September 2010) and was the time in which objections or other representations could be made.
- 4.3 It is understood that the Department for Transport received 5 objections and 18 letters of support. One of the objections was received from Broxtowe Borough Council on the grounds that the draft Order provides for the replacement open space to be vested in Nottinghamshire County Council; in the 2009 Order the land was to be vested in Broxtowe. This amendment was necessary as it is a legal requirement for the replacement land to vest in the landowner from whom the related open space is to be acquired when it is provided as 'formal' replacement/exchange land (in the 2009 Order the land was not being provided as formal replacement/exchange land). The NET Project team are currently in discussion with the two Authorities over a number of issues that arise out of this amendment and are seeking to resolve these. Otherwise there were no significant new issues arising out of the objections. Nottinghamshire County Council did not object.

- 4.4 Once each initial objection and representation stage is complete, the Secretary of State relevant for each application will then decide whether to deal with the comments by a process of written exchanges or a public inquiry. If an inquiry is held it is likely to take place early in 2011.
- 4.5 Now that the TWAO has been submitted, the Council is required by Section 239 of the Local Government Act 1972 to meet to decide whether to confirm the resolution set out above. Given that the circumstances leading to that resolution have not changed, it is recommended that Council confirms the resolution made on 12 July 2010 to promote the TWAO application (and make the Exchange Land Certificate application).

5 OTHER OPTIONS CONSIDERED IN MAKING RECOMMENDATIONS

- 5.1 Voluntary disposal of the open space land by the County Council to the City Council remains the preferred option and discussions will continue with the County Council with the aim of achieving this. If successful, the TWAO and Exchange Land Certificate applications would be withdrawn once an agreement is signed to transfer the land voluntarily.
- 5.2 The City Council has proposed that the County Council delegates to the City Council the power to carry out the local disposal procedures of advertising, consulting and effecting the transfer of the open space land but the County Council has not agreed to this option and, in any event, it is not clear that the County Council could realistically make such a delegation sufficient to allow the City Council to deal with the County Council's land.
- 5.3 The project's continued progress requires proceeding with an option that enables the City Council to secure the land compulsorily through the procedures outlined in the report to the 12 July 2010 Council.

6 FINANCIAL IMPLICATIONS (INCLUDING VALUE FOR MONEY)

- 6.1 Financial implications were addressed in detail in the report prepared for the 12 July 2010 Council meeting and are not repeated here. There are no further issues arising.

7 RISK MANAGEMENT ISSUES (INCLUDING LEGAL IMPLICATIONS, CRIME AND DISORDER ACT IMPLICATIONS AND EQUALITY AND DIVERSITY IMPLICATIONS)

- 7.1 The risks attached to not pursuing the Amending Order and Exchange Land Certificate applications were described in the 12 July report, together with detailed legal and procedural issues.
- 7.2 NET is a reliable and safe form of transport and is fully compliant with the requirements of Disability Discrimination legislation and offers an accessible form of transport for those with mobility difficulties.

8 LIST OF BACKGROUND PAPERS OTHER THAN PUBLISHED WORKS OR THOSE DISCLOSING CONFIDENTIAL OR EXEMPT INFORMATION

- 8.1 Nottinghamshire County Council notice of withdrawal from the scheme, 24 September 2009.

9 PUBLISHED DOCUMENTS REFERRED TO IN COMPILING THIS REPORT

- 9.1 Section 239 Local Government Act 1972.
- 9.2 The Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006.
- 9.3 Exchange Land certificate application, 13 July 2010.
- 9.4 Proposed Nottingham Express Transit System (Amendment) Order application 2 August 2010.

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