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<b>Report to:</b> Cabinet	<b>Date of Meeting:</b> 21 <sup>st</sup> June 2012
<b>Subject:</b> Sefton Metropolitan Borough Council (Thornton to Switch Island Link Road) A5758 Broom's Cross Road Compulsory Purchase Order 2012	
<b>Report of:</b> Director of Built Environment	<b>Wards Affected:</b> Park, St Oswald, Netherton and Orrell, Molyneux, Manor, Sudell
<b>Is this a Key Decision?</b> Yes	<b>Is it included in the Forward Plan?</b> Yes
<b>Exempt/Confidential</b>	No

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### **Purpose/Summary**

To seek authority to make, advertise and submit for confirmation a Compulsory Purchase Order to acquire land and rights for the proposed Thornton to Switch Island Link and associated works and to publish and approve the accompanying Statement of Reasons.

### **Recommendation(s)**

- i) That a Compulsory Purchase Order be made under Sections 239, 240, 246, 249 and 250 of the Highways Act 1980 and the Acquisition of Land Act 1981 to be known as the Sefton Metropolitan Borough Council (Thornton to Switch Island Link Road) A5758 Broom's Cross Road Compulsory Purchase Order 2012 for the acquisition of land and new rights (the 'Order Land') within the areas shown on the plans in Annex A for the construction of the proposed new highway, the Thornton to Switch Island Link and associated works described in the Side Roads Order.
- ii) That the Director of Built Environment in consultation with the Head of Investment Programmes and Infrastructure, the Head of Planning Services and Head of Corporate Legal Services be authorised to:
  - Take all necessary steps to secure the making, submission to 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 Council's case at any Public Inquiry; and
  - Negotiate and acquire interests in land and new rights set out in the Compulsory Purchase Order either by agreement or compulsorily; and
  - Negotiate and enter into any appropriate agreements with Government departments and agencies to secure the necessary access and rights to construct the scheme and undertake any associated works.

## How does the decision contribute to the Council's Corporate Objectives?

	<u>Corporate Objective</u>	<u>Positive Impact</u>	<u>Neutral Impact</u>	<u>Negative Impact</u>
1	Creating a Learning Community		✓	
2	Jobs and Prosperity	✓		
3	Environmental Sustainability	✓		
4	Health and Well-Being	✓		
5	Children and Young People		✓	
6	Creating Safe Communities	✓		
7	Creating Inclusive Communities	✓		
8	Improving the Quality of Council Services and Strengthening Local Democracy	✓		

### Reasons for the Recommendation:

The compulsory purchase of land and rights is necessary in order to secure all the land needed for the proposed Thornton to Switch Island Link scheme and associated works, the Council having been unable so far to secure all the land and rights required for the scheme through voluntary means and negotiation.

### What will it cost and how will it be financed?

#### (A) Revenue Costs

#### (B) Capital Costs

Cabinet approved the spend profile for the scheme for 2009/10 – 2012/13, totalling £5.912m on the 1<sup>st</sup> October 2009. The allocations were included in the Capital Programme 2010/11 – 11/12 approved by Cabinet on the 4<sup>th</sup> March 2010. Revised allocations for 2011/12 – 2012/13 were presented to Cabinet as part of the Capital Programme on 3<sup>rd</sup> March 2011 and updated in the report to Cabinet on 13<sup>th</sup> October 2011.

In February 2011, the DfT advised that Sefton Council's Best and Final Funding Bid for the Thornton to Switch Island Link scheme had been approved and that funding for the scheme was confirmed. The funding approval letter confirmed that the DfT will provide a maximum capped funding contribution of £14.5m towards the estimated scheme cost of £18.588m. The contribution will be paid as capital grant under Section 31 of the Local Government Act 2003. The full capital cost of the scheme, including the Government contribution has been included in the Council's capital programme.

All proposed commitments are contained within the Council's previously approved allocation in the medium term financial plan and in accordance with the funding profile reported to Cabinet on 3<sup>rd</sup> March 2011.

## Implications:

The following implications of this proposal have been considered and where there are specific implications, these are set out below:

<b>Legal</b> Within the Council's Constitution (Matters Delegated to Full Cabinet) the Cabinet has delegated authority to make the Compulsory Purchase Order and to acquire land and rights over land.
<b>Human Resources</b>
<b>Equality</b> 1. No Equality Implication <input type="checkbox"/> 2. Equality Implications identified and mitigated <input checked="" type="checkbox"/> 3. Equality Implication identified and risk remains <input type="checkbox"/>

## Impact on Service Delivery:

### What consultations have taken place on the proposals and when?

The Head of Corporate Finance (FD1446) and Head of Corporate Legal Services (LD790) have been consulted and any comments have been incorporated into the report.

### Are there any other options available for consideration?

The Council could decide to continue to seek to negotiate the purchase of interests within the area that is the subject of the proposed Compulsory Purchase Order without recourse to compulsory acquisition. Although the negotiations will continue, it may not be possible to reach agreements with all parties concerned within a timescale that fits in with the programme for the scheme, or to reach any agreement at all. The consequence would be that the scheme would be delayed, which would put the Government funding commitment at risk or that it may not be possible to deliver the scheme.

## Implementation Date for the Decision

Following the expiry of the "call-in" period for the Minutes of the Cabinet/Cabinet Member Meeting

**Contact Officer:** Stephen Birch Team Leader STPU  
**Tel:** 0151 934 4225  
**Email:** stephen.birch@sefton.gov.uk

## Background Papers:

The following papers are available for inspection by contacting the above officer(s).

Cabinet - 17<sup>th</sup> May 2007 – Thornton Switch Island Link Scheme – Funding  
Cabinet - 15<sup>th</sup> December 2010 - Thornton Switch Island Link – Best and Final Funding Bid  
Planning Committee – 15<sup>th</sup> December 2010 – S/2010/1050 Thornton – Switch Island Link, Dunnings Bridge Road, Netherton  
Letter from Government Office for the North West – 24th January 2011 - Town and Country Planning (Consultation) (England) Direction 2009. Thornton – Switch Island Link, Dunnings Bridge Road, Netherton  
Letter from Department for Transport Regional and Local Major Projects Division – 4<sup>th</sup> February 2011 – Funding Approval and Reconfirmation of Programme Entry  
Cabinet - 3<sup>rd</sup> March 2011 - Thornton to Switch Island Link, Progress Update, Revised Project Management Arrangements, Scheme Programme & Cost Profile  
Letter from Sefton Council to Department for Transport – 14<sup>th</sup> March 2011 – Thornton to Switch Island Scheme, Funding Approval and Reconfirmation of Programme Entry  
Cabinet - 13<sup>th</sup> October 2011 - Thornton to Switch Island Link, Progress Update and Commencement of Detailed Design  
CORB – 11<sup>th</sup> November 2011 – Agreement with the Highways Agency  
CORB – 11<sup>th</sup> November 2011 – Agreement with VOSA  
CORB - 13<sup>th</sup> February 2012 - Agreement with Highways Agency

## **1. Introduction/Background**

- 1.1 A report to Cabinet on the 3<sup>rd</sup> March 2011 advised Members of the progress of the Thornton to Switch Island Link scheme and provided information about the current programme and spending profile for the scheme.
- 1.2 Members were advised that the Government had accepted Sefton Council's Best and Final Funding Bid for the Thornton to Switch Island Link scheme and that funding for the scheme was confirmed, subject to the conditions set out in the letter from the DfT. The Council's medium term capital programme was amended accordingly. In addition, Government Office North West had advised the Council's Planning Department that they did not intend to 'call in' the proposal for a Public Inquiry. Consequently, the Council issued notice of the granting of planning permission on 26<sup>th</sup> January 2011.
- 1.3 Members were also advised that work had been ongoing on the preparation of a Side Roads Order and a Compulsory Purchase Order for the scheme. A Compulsory Purchase Order (CPO) is required to enable the Council to exercise powers under Sections 239, 240, 246 and 250 of the Highways Act 1980 and the Acquisition of Land Act 1981 to acquire land and new rights for the construction of the Thornton to Switch Island Link and associated works, including works described in the Side Roads Order. In parallel with the development and publication of the draft CPO, negotiations will be undertaken with landowners to try and acquire the land and rights needed for the scheme by agreement. A Side Roads Order (SRO) for the Thornton to Switch Island Link scheme is required to enable the Council to connect the new link into the existing highway network, stop up roads that cross the proposed route and stop up and divert footpaths and bridleways.
- 1.4 The preparation of the draft Orders has now been completed and the purpose of this report is to seek approval from Members to make the CPO and publish the accompanying Statement of Reasons. The CPO and plans of the Order Land together with the Statement of Reasons are available at:  
<http://modgov.sefton.gov.uk/moderngov/ecCatDisplay.aspx?sch=doc&cat=13317&path=13158,13197>

Once made, the CPO will be advertised, publicised, notified and submitted to the Minister for confirmation.

## **2.0 Description of Order Land**

- 2.1 A Compulsory Purchase Order is required for the Thornton to Switch Island Link Road. The CPO will, subject to Confirmation by the Secretary of State for Transport, empower Sefton Council to acquire land and rights required for the construction and maintenance of the Thornton to Switch Island Link Road and associated works, and to enable the new road to be linked into the existing highway network pursuant to the Side Roads Order.
- 2.2 The Compulsory Purchase Order is made under sections 239, 240, 246, 249 and 250 of the Highways Act 1980 and the Acquisition of Land Act 1981. The powers

in the Act enable the Acquiring Authority to acquire land compulsorily and acquire rights compulsorily by creating new rights for the following purposes:-

- (i) the construction of a new highway which will provide a link between Southport Road (A565) at Thornton and the junction of the M57, M58, A59 and A5036 at Switch Island, Netherton, in the Metropolitan Borough of Sefton;
- (ii) the construction of a new highway to connect the above mentioned highway with the existing road system at Park View, Thornton, in the Metropolitan Borough of Sefton;
- (iii) the diversion and extinguishment of existing drainage and the carrying out of drainage works in connection with the construction of highways, including the construction of four attenuation ponds adjacent to Long Lane, Rakes Lane, Netherton Brook and Switch Island Junction, and the provision of new means of access to those attenuation ponds;
- (iv) the construction of the following ancillary highway:-
  - a new highway between the improved Long Lane and the improved Ince Lane (A565)

the construction of the following new bridleways:-

- a new bridleway along the northern boundary of the Classified Road from Holgate to Back Lane, then along Back Lane to its junction with Longdale Lane;
- a new bridleway along the route of Holgate, from north of Orchard House to the Classified Road;
- a new bridleway along the southern boundary of the Classified Road from Rakes Lane to Holgate;
- a new bridleway along the route of Chapel Lane from east of its junction with the access to the Lodge to the Classified Road

and improvement of the following existing highways:-

- Ince Lane (A565) at Thornton
- Southport Road (A565) at Thornton
- Long Lane at Thornton
- Ince Road at Thornton
- Southport Road (Service Road) at Thornton
- Park View (A565) at Thornton
- Holgate at Thornton
- Brickwall Lane at Netherton
- Chapel Lane at Netherton

in pursuance of the Sefton Metropolitan Borough Council (Thornton to Switch Island Link Road) A5758 Broom's Cross Road (Side Roads) Order 2012;

- (v) use by the acquiring authority to construct a turning head in connection with the construction and improvement of highways and the provision of new means of access to premises as aforesaid;

- (vi) the provision of new means of access to premises in pursuance of the Sefton Metropolitan Borough Council (Thornton to Switch Island Link Road) A5758 Broom's Cross Road (Side Roads) Order 2012;
- (vii) use by the acquiring authority for use as site compounds and topsoil storage areas in connection with the construction and improvements of highways as aforesaid;
- (viii) mitigating the adverse effect on land used by the Vehicle and Operator Services Agency (VOSA) which the existence or use of the highways proposed to be constructed or improved will have on its operation;
- (ix) mitigating the adverse effect which the existence or use of the highways proposed to be constructed or improved will have on the surroundings thereof by the provision of landscaping and habitat creation;
- (x) the right to cleanse and maintain existing watercourse at Hunts Brook.

- 2.3 The Order Land has a total area of 34.2883 hectares. This comprises 34.1805 hectares for which Title to the land is required and 0.1078 hectares for which Rights over land for cleansing and maintaining watercourses is required. The Order Plans in Annex A detail the specific plots with areas for Title shaded pink and areas for Rights shaded blue.
- 2.4 The large majority of land throughout the route is agricultural farmland. The route crosses several farms with the land being typically arable. There is some pasture land to the south of Back Lane between Holgate and Rakes Lane. There are two areas, one to the north of Back Lane the other to the west of Holgate, which were managed by the Forestry Commission but have been acquired by the Council. These areas have been planted with trees, and in some places have a periphery of grassland.
- 2.5 The Order Land is in a variety of ownerships, including private individuals and academic institutions. A comprehensive schedule of ownerships and rights has been prepared and forms Schedule 1 to the CPO. Considerable efforts have been made to identify those who have an interest in the land and rights to be compulsorily acquired, including (but not limited to) serving statutory notices on the land owners and Tenants, checking Council Tax and Business Rates records and checking the Electoral Register and to seek to achieve the voluntary acquisition of their interests. Efforts to achieve voluntary acquisition will continue throughout the compulsory acquisition process.
- 2.6 At the eastern end of the scheme there is some land that was formerly part of Switch Island junction, but is now part of the Vehicle and Operator Services Agency (VOSA) vehicle inspection and testing facility. This land remains in the ownership of the Department for Transport and is recorded as adopted highway. Therefore, it has been excluded from the Order land. Access to this land to enable the construction of the scheme will be provided under the terms of agreements with the Highways Agency and VOSA. This Agreement allows the Council to carry out the necessary works to the adopted highway and provides a mechanism whereby VOSA will vacate their Site for a period of two months, to enable the Works to be completed.

- 2.7 There are four plots included in the CPO for use as site compounds and/or topsoil storage areas associated with the construction of the road. These plots are all located on land owned by Sefton MBC, but which are tenanted to third parties. Sefton MBC will seek to take temporary occupancy of the land via agreement with the current tenants. If agreement cannot be reached then the powers of the Order will be invoked to allow Sefton MBC to take occupancy. It is intended to return these plots to their former use on completion of construction.

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

- 3.1 Under the provisions of Sections 239, 240, 246, 249 and 250 of the Highways Act 1980 and the Acquisition of Land Act 1981 highway authorities, in this case Sefton Council, can be authorised under the provisions of a Compulsory Purchase Order to compulsorily purchase land and rights for the purposes described in Paragraph 2.2 above.

### **4.0 Statement of Planning Position**

- 4.1 The Thornton to Switch Island Link proposals are consistent with national policy guidance, Liverpool City Region priorities, the objectives of the Merseyside Local Transport Plan and local planning and transport policies. This position has been tested through Government scrutiny of the business case for the scheme and through the planning application process.
- 4.2 The planning application for the scheme was submitted in July 2010 and considered by Sefton Council's Planning Committee on 15<sup>th</sup> December 2010. Having carefully considered the relevant planning issues raised by the scheme, the Government Office North West concluded that the Secretary of State's intervention would not be justified and that the decision as to whether to grant planning permission should therefore remain with Sefton Council. Planning permission (ref. S/2010/1050) for the road scheme was subsequently granted on 25th January 2011
- 4.3 In addition a minor amendment to the planning approval to cover the provision of a new agricultural access off the Chapel Lane junction (ref. S/2012/0009) was approved on 2<sup>nd</sup> February 2012. The changes involved minor amendments to the junction layout, signal positions and the pedestrian crossing point. The planning officer deemed that the changes were such that a minor amendment application was appropriate

### **5.0 Special Consideration Affecting the Order Land**

- 5.1 There are no ancient monuments or listed buildings in the Order Land. There are no buildings in a conservation area that would be demolished. The scheme does not require any land owned by the National Trust. The scheme does not require any common land. There will be no property demolition required.



## **6.0 Related Order**

- 6.1 It is proposed that the Sefton Metropolitan Borough Council (Thornton to Switch Island Link Road) A5758 Broom's Cross Road (Side Roads) Order 2012 will be made and advertised, publicised and notified at the same time as the Compulsory Purchase Order. The Side Roads Order is the subject of a separate report to this Cabinet. A Side Roads Order (SRO) for the Thornton to Switch Island Link scheme is required to enable the Council to exercise powers under sections 14 and 125 of the Highways Act 1980 to stop up, improve, divert, raise, lower or alter lengths of highway, to construct new highways for purposes concerned with any such alterations, to stop up private means of access and to provide new private means of access. The Side Roads Order (SRO) will therefore provide for the connection of the new link into the existing highway network, the closure of roads that cross the proposed route and stopping up and diverting footpaths and bridleways. There are no other orders associated with these proposals.

## **7.0 Human Rights Act 1998**

- 7.1 The Human Rights Act 1998 places direct obligations on public bodies such as the Council to demonstrate that the use of compulsory purchase powers is in the public interest and that the use of such powers is proportionate to the ends being pursued.
- 7.2 It is acknowledged that the compulsory acquisition of the Order Land could amount to an interference with the human rights of those with an interest in the Land. These include rights under Article 1 of the First Protocol of the European Convention on Human Rights ("ECHR") (which provides that every natural or legal person is entitled to peaceful enjoyment of his possessions) and Article 8 of the ECHR (which provides that everyone has the right to respect for his private and family life, his home and his correspondence).
- 7.3 In this instance, the Council considers that there is a compelling case in the public interest for compulsory acquisition of the Order Lands that should outweigh 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 the new link road and the extensive benefits for both travellers and local residents that the scheme provides.

## **8.0 Financial Implications**

- 8.1 The Head of Corporate Finance and ICT comments that the financial implications of the report for the Council are that capital expenditure of £10k will be incurred in making, advertising and submitting the Compulsory Purchase Order, as indicated above, and will be financed from the Council's own resources that have been previously included in the capital programme.

## **9.0 Conclusions**

- 9.1 The Council has been promoting this scheme for many years and there is overwhelming public support for the scheme, as demonstrated by the public consultations undertaken over recent years. The scheme has planning permission

and funding approval. It is important that the Council acquires the land and rights necessary and powers needed for the construction of the scheme and the making of the CPO is the next stage in this process. Negotiation with landowners for the purchase of land by agreement will continue throughout the process.