

Forward Plan reference number: FP/041/02/24

Report title: Chelmsford North East Bypass Section 1A - acquisition of land by Compulsory Purchase Orders	
Report to: Councillor Kevin Bentley – Leader of the Council	
Report author: Steve Evison – Director of Sustainable Growth	
Date: 22 March 2024	For: Decision
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County Divisions affected: Springfield, Chelmer, Broomfield & Writtle	
Confidential Appendix This report has a confidential appendix which is not for publication as it includes exempt information falling within paragraph 3 and 5 of Part 1 of Schedule 12A of the Local Government Act 1972, as amended.	

1. Everyone's Essex

- 1.1 Everyone's Essex has the aim of creating a strong, inclusive and sustainable economy, a high-quality environment and a good place for children and families to grow. This includes a commitment to deliver and maintain high quality infrastructure to support a growing economy and the delivery of new housing and communities.
- 1.2 The Chelmsford Housing Infrastructure Fund (HIF) projects will support the aim of creating a strong, inclusive and sustainable economy set out in Everyone's Essex and achieve shared outcomes to develop our county sustainably, connect us to each other and the world and share prosperity with everyone. These long-awaited improvements to the transport network will support people travelling for business or pleasure, which in turn helps the economy of greater Essex. Beaulieu Park Station (BPS) and the Chelmsford North East Bypass (CNEB) will relieve congestion on roads in and around Chelmsford providing easier, more reliable and resilient journeys in the region.
- 1.3 The design of the first phase of the new bypass (Section 1A) has been finalised and work to prepare for procurement of the scheme has been undertaken with a view to award a construction contract for this element of the highway works in September 2024. Prior to the award of the main works contract, it is necessary to ensure that all land assembly is complete to permit the contractor access to the land and to meet the conditions set out within the funding agreement with Homes England.
- 1.4 Together CNEB and BPS will provide the conditions needed to unlock 5,970 new homes, employment uses, a new country park and other community and leisure facilities north of Chelmsford. By committing to the timely delivery of infrastructure to unlock growth and development opportunities, ECC is able to

directly support the development of high quality, sustainable new communities such as those being planned at Chelmsford Garden Community.

2 Recommendations

- 2.1 To note that land negotiations continue to seek to secure the land required for the Chelmsford North East Bypass Section 1A by agreement alongside preparations for Compulsory Purchase Order(s).
- 2.2 Agree to delegate to the Director, Sustainable Growth in consultation with the Director, Legal and Assurance and the Council's S151 Officer to authorise:
 - a) the making of one or more Compulsory Purchase Orders to acquire land for the construction of the Chelmsford North East Bypass Section 1A shown indicatively by the pink and blue colouring on the plans at Appendix 2A and 2B and publicise the same
 - b) the undertaking of additional processes (public path stopping up/diversion, traffic regulation and speed limit orders) required for the changes to the existing road network as a result of the project, and
 - c) pursuing the Orders to confirmation.
- 2.3 Agree to delegate to the Director, Sustainable Growth to authorise minor changes to the proposed CPO schedules (Appendix 2C) and the boundaries of the land to be acquired (Appendices 2A and 2B), in consultation with the Director, Legal and Assurance and the Council's Section 151 Officer and Leader to resolve objections or make appropriate modifications as part of the confirmation process.

3 Background and Proposal

- 3.1 The full Chelmsford North East Bypass (CNEB) scheme will comprise a new 4.6km single carriageway (Sections 1A and 1B) and dualling of a 1.2km stretch of the A131 (Section 2). The single carriageway section is split into a southern section (Section 1A) and a northern section (Section 1B). These two sections will meet at an intermediate roundabout which will connect the bypass with the proposed new Northern Radial Distributor Road (NRDR). The NRDR will be a new east-west road which will be delivered by the developer consortium as part of the Chelmsford Garden Community and will link Essex Regiment Way in the west (at Wheelers Hill Roundabout) with CNEB to the east. The CNEB is named as key infrastructure under the Chelmsford City Council Local Plan. Without the CNEB 1A, the majority of site allocations in North East Chelmsford will not be deliverable, due to intolerable impacts this would place on the existing highway network which is already near capacity at peak times.
- 3.2 In April 2022 a Cabinet Decision was taken to use compulsory purchase powers to secure land required for the Phase 1 of CNEB (FP/977/02/21) if needed. Subsequent to this decision, a decision was taken (FP/187/07/23) to phase the delivery of CNEB, with CNEB Section 1A being delivered first by March 2026.

- 3.3 It has been important to consider deliverability of the CNEB Section 1A to the timescales imposed by Homes England related to the grant funding for the scheme. Section 1A CNEB (along with BPS) must be delivered by March 2026. Failure to do so will have significant financial impacts on ECC. All expenditure past the March 2026 deadline will fall to ECC to fund if no mitigation can be found.
- 3.4 ECC entered into a Deed of Variation with Homes England in December 2023 that requires the delivery of only Section 1A with the funding available and to extend the timetable for delivery of Section 1A until March 2026. Given this decision and Deed of Variation, a further decision is needed on a CPO for CNEB Phase 1 Section 1A only. This is the proposed decision in this report.
- 3.5 On 16th January 2024 a Cabinet Decision (FP/284/11/23) was taken to launch a competitive procurement for the CNEB Section 1A main works design and build contract using the Pagabo Framework. Advertising the tender for the detailed design and construction of the bypass is now live.
- 3.6 Tender returns are expected to be received in mid-May 2024, and it is currently anticipated that the CNEB Section 1A main works construction contract will be awarded in September 2024. As the contract is a design and build contract it is envisaged that a period of three months will be required for further surveys and investigations (which will require access to the land from 30th September 2024) to complete the detailed design process. The main construction works is then planned to commence in January 2025.
- 3.7 ECC do not own any of the land on which CNEB Phase 1A will be constructed. Before ECC can award the construction contract and begin construction of CNEB Section 1A, ownership of the land parcels is needed. Negotiations with landowners and other parties with a long-term interest in the land have taken place over the last two years. These are complex and ongoing. The relevant freeholders, and developers with options to acquire land, are concurrently negotiating with ECC on other matters related to land use and development.
- 3.8 In order to construct the project, ECC will need to acquire land outside the current highway boundary. The design of the proposed project has taken account of its impact on local residents and has been designed to minimise the number of landowners affected. The proposed route has been safeguarded in the Local Plan and selected because of the considerable benefits that the project would bring, and the scheme has been developed taking the results of public consultation into account.
- 3.9 This report requests authorising the making and publication of the necessary CPOs to minimise any potential delays and excessive costs should land negotiations, which are ongoing, prove unsuccessful.
- 3.10 ECC is in regular contact with the affected landowners. To deliver the project, ECC is required to purchase land for the permanent works as well as licensing additional land for temporary situations for use as site compounds and access tracks. If negotiations are successful, it might not be necessary to fall back on

the CPO, but the CPO will give ECC some surety that the land needed can be secured if negotiations did stall or break down.

- 3.11 ECC have commissioned Lambert Smith Hampton to engage with the affected landowners to negotiate acquisitions for the land required as part of the project and therefore avoid the need for a CPO if possible. However, in the interest of ensuring the construction works remain on programme and to ensure a fair and reasonable cost for the land acquisition is achieved, it is the intention to proceed with the CPO process in parallel with these negotiations in order to provide assurance that the land will be acquired on acceptable terms. It should be noted that the compulsory purchase process is complex and follows statutory requirements from the making of an order through to confirmation, usually by the Secretary of State.
- 3.12 The acquisition of required land via compulsory purchase (if this was required) would be likely to delay the award of the main works construction contract beyond September 2024, which will place further time pressure on the delivery programme.

- 3.13 The land needed for Phase 1A of the CNEB is as follows:

Type of land	Appendix	What needs to be acquired
Part of part of Bulls Lodge Quarry which is currently used as Arable land incorporating watercourse and hedgerows with some wood and scrub planting.	2A	Approx. 120,000 square metres of land required to deliver CNEB Section 1A road construction and associated works including drainage attenuation and landscaping. Allowance has also been made for temporary site compound.
Part of part of Bulls Lodge Quarry which is currently used as Arable land incorporating watercourse and hedgerows with some wood and scrub planting.	2B	Approx. 144,000 square metres of land required to deliver CNEB Section 1A road construction and associated works including drainage attenuation and landscaping. Allowance has also been made for temporary site compound.

- 3.14 Land assembly for CNEB Section 1A is complex and involves multiple parties and land interests. The majority of land on which the CNEB Section 1A main works will take place currently falls within Bulls Lodge Quarry which is controlled by Hanson (now Heidelberg Materials UK), but the land is owned by both Hanson and Threadneedle Pensions Limited (Threadneedle). A further smaller parcel of land is owned by Countryside L&Q (Beaulieu) LLP. There are also two agricultural tenants who farm land within the existing quarry who have

agricultural tenancy agreements in place with the respective landowners. Negotiations for the freehold transfer of land are underway and draft Heads of Terms have been circulated and agreed in principle, but these are yet to be agreed.

- 3.15 Hanson and Threadneedle have option agreements with Countryside L&Q (North East Chelmsford) LLP in relation to land in the area including CNEB Section 1A of the bypass. Countryside L&Q (North East Chelmsford) LLP has a live outline planning application to develop 3,500 homes and other development, to form the largest part of the Chelmsford Garden Community.
- 3.16 Acquisition of the land will be subject to the exercise of an option by Countryside L&Q which enables them to partially 'draw down' as essential infrastructure serving the entire Garden Community. Exercising this option will guarantee vacant possession of the land for CNEB Section 1A.
- 3.17 The complexity and ongoing nature of the land acquisition negotiations and the mechanics of assembly once negotiation concludes presents a significant risk to the programme timetable. There is no certainty of if or when negotiations will conclude and how long it will take for ECC to own the land.
- 3.18 The option of securing the land through CPO is required to provide greater certainty that the land assembly can be secured to deliver the project as soon as possible. It will provide a fall-back position should an agreed land acquisition not be possible on acceptable terms.
- 3.19 There is a risk to the programme linked to land assembly generally. This is the case if ECC proceed with negotiation or if it were to exercise its CPO powers. Should this risk materialise, the cost to ECC could be significant either way due to it not being able to claim funding after March 2026 as either scenario could cause a programme delay. Given the negotiations are ongoing, the option of CPO is recommended in order to limit programme delay and cost as this option affords ECC certainty and control over the level of risk exposure. There is a risk that a Public Inquiry could be required as part of the CPO confirmation process.
- 3.20 We cannot be certain of how long negotiations will take or if they can be finalised. We do not know if a Public Inquiry will be required or how long it will take for a decision on the confirmation. The purpose of the recommendations in this report is to permit ECC as many options as possible to mitigate and meet programme to the best of its ability. There is a possibility for ECC to ask Homes England (and HM Treasury) to extend the grant funding timescales. It is not guaranteed that this request will be granted. Please see section 6.1 for further detail.
- 3.21 The delay in programme and uncertainty presented by land assembly for CNEB Section 1A could mean that the scheme completion runs beyond the grant funding deadline, leaving a funding shortfall. In this scenario it is possible that the abortive costs would be comparable with the cost implications of continuing with a programme delay, and therefore ECC would need to decide whether the scheme should be aborted. This would have a significant impact on the garden community development, due to the unsustainable impact on the existing

highway and transport networks in the absence of CNEB, and could materially affect the number of new homes that can be delivered. Developers would likely be required by the planning authority to assure delivery and financing of CNEB themselves.

- 3.22 Land acquisition discussions and, if necessary, the compulsory purchase Process, for Section 1A works will need to run in parallel with the tender process which is currently live. Tenderers have been made aware that access to the land needed will be secured prior to contract award. The Council will be unable to award the contract unless and until it is satisfied that land assembly will be completed in time.

4 Links to our Strategic Ambitions

- 4.1 This report links to the following aims in the Essex Vision

- Develop our County sustainably
- Connect us to each other and the world
- Share prosperity with everyone

- 4.2 Approving the recommendations in this report will improve the chances of delivery of the scheme within the grant funding restrictions the delivery of CNEB Section 1A which will have the following impact on the Council's ambition to be net carbon neutral by 2030:

- The provision of CNEB Section 1A will reduce current traffic delays and congestion within Chelmsford by providing a more direct route to the new Beaulieu Park Railway Station and access to the A12.
- It will reduce private car journeys into Chelmsford City Centre (to access Chelmsford Station), thereby reducing emissions.

- 4.3 This report links to the following strategic priorities in the emerging Organisational Strategy 'Everyone's Essex':

- A strong, inclusive and sustainable economy
- A high quality environment, including in our new garden communities
- Health wellbeing and independence for all ages
- A good place for children and families to grow.

5 Options

- 5.1 **Option 1 – Recommended: Agree to pursue Compulsory Purchase Order powers in parallel with continuing freehold land negotiations for the land required to deliver CNEB Section 1A.**

It is intended to continue freehold land negotiations to secure land required for the delivery of Section 1A of CNEB. However, as a result of the complexities around the land negotiations and option agreements and land drawdown

constraints it is recommended that Compulsory Purchase Order powers are also progressed to provide assurance that the land can be acquired accepting that if required this would extend beyond the current agreed funding timeframe.

There is a land assembly risk for the main works which we are seeking to manage as set out above, but we will not award the contract for the main CNEB works unless and until we are satisfied land assembly will be completed in time.

5.2 Option 2 – Not Recommended: Not to pursue Compulsory Purchase Order powers in parallel with continuing freehold land negotiations for the land required to deliver CNEB Section 1A.

If Compulsory Purchase Order powers are not used there is a risk that if land negotiations cannot be concluded in a timely fashion, or at all, CNEB has no alternative land assembly mechanism. This would likely make the scheme undeliverable and at the very least would significantly impact the timeline for delivery while other options are considered. This would expose ECC to greater financial risk.

6 Issues for consideration

6.1 Financial implications

6.1.1 The total funding package associated with Chelmsford North East Bypass for allowable expenditure under the relevant grant determination agreements is £95.585m. Of this, £93.4m is related to Housing Infrastructure Fund monies from Homes England, with the remainder of £2.2m relating to Section 106 funds. It should be noted that the Homes England funding is subject to a funding deadline of March 2026. If ECC were required to spend past this deadline in order to complete the programme, at present, this expenditure would fall to ECC to fund. There is no capital provision within the Council's Medium-Term Resource Strategy that is set aside to fund this, and as such any expenditure past March 2026 would create a budget pressure.

6.1.2 The forecast and profile of expenditure to deliver of CNEB Section 1A is not altered by the recommendations within this paper; however, there are a number of risks that could materialise across the programme that need to be recognised. Please see section 6.2 for further details.

6.1.3 It should also be noted that capital expenditure totalling £27.5m is expected to have been incurred against the scheme by the end of financial year 2023/24. This figure does not include funds that would be required to be repaid if the scheme were aborted, as repayment of HIF funding claimed would only be required under very unlikely circumstances – the risk of this is therefore perceived as low. If funds were to have to be repaid this would equate to an additional £14.7m, as ECC have been unable to claim the total funds related to the scheme. If the abortive cost position of the scheme is thought to be comparable to the cost of programme delay, then ECC will need to consider

aborting the scheme as a serious option to mitigation. This would come with revenue implications as well as unknown implications for BPS.

6.2 Financial Risks and Mitigations

6.2.1 The *general* risks of the programme are not changed from the most recent Cabinet paper by the recommendation to agree to use Compulsory Purchase Order powers in parallel with continuing freehold land negotiations for the land required to deliver CNEB Section 1A. In fact, the reason for this recommendation is, in-part, to limit establishing a timeframe for land assembly which would otherwise increase the risk of delays and ECC's ability to deliver the project. If land cannot be secured through negotiation, agreeing the recommended option under this decision reduces the financial risk exposure for ECC, by providing an alternative route to securing land for construction and thus mitigating the financial liabilities were a decision to be taken to fund the project beyond the HIF funding availability period. To note, ECC are required to fund any additional expenditure beyond the agreed funding period, if an extension could not be negotiated with Homes England and HM Treasury.

6.2.2 The current approved capital budget and delivery programme assumes that a Public Inquiry is not required for this project. If the CPO route, as recommended in this paper, leads to a Public Inquiry this could cause significant programme delays. If there were a Public Inquiry, the programme would be extended by an estimated period of 12 months with costs increasing. Not only would this lead to ECC incurring the direct costs of the Public Inquiry, this would also mean a significant proportion of the expenditure planned to occur in 2025/26 would fall outside of the funding period for HIF as it would likely be pushed beyond March 2026.

6.2.3 As set out above in 6.1.3 aborting the scheme could offer some financial mitigation should additional costs fall to ECC.

6.3 Legal implications

6.3.1 ECC must meet the terms of the HIF Grant Funding Agreement to allow it to reclaim expenditure for the delivery of CNEB. Works for CNEB Section 1A must be completed by March 2026 and works completed after this time cannot be funded by HIF funding unless Homes England grant a further extension which, as set out above, we consider unlikely. ECC would need to pay for these works without reimbursement. The contractual agreements require detailed conditions to be met before claims for HIF Funding are paid by Homes England including Certificates of Title. This needs to be managed carefully to ensure that ECC submits and recovers claims for HIF Funding successfully. CNEB Section 1A land assembly would need to be demonstrated as part of a Certificate of Title.

6.3.2 ECC has the power to make a compulsory purchase order for highway purposes in relation to the local road network. In relation to the confirmation process, through a Public Inquiry or otherwise, ECC will need to be able to demonstrate that it has a clear plan for the delivery of the Section 1A scheme and that it has the necessary resources to achieve that end within a reasonable time scale. It

will also need to address any impediments to delivery. It is common practice and acknowledged in guidance from central government, that negotiations with landowners should sensibly continue alongside a formal CPO process. In using CPO powers ECC will have to set out a robust case to the Secretary of State as to why it needs to compel the owners etc to transfer their interests to ECC. The report explains the issues in relation to the timeline for the HIF and how the proposed road scheme fits in with the build out of the garden community, as per adopted Local Plans and live planning applications. If there are objections to a CPO a Public Inquiry is likely where those are statutory objections. When a CPO is submitted for confirmation, it can be confirmed, confirmed with modifications or not confirmed. ECC would need a confirmed compulsory purchase order to enable it to require the land transfers.

6.4 Human Rights Implications

6.4.1 Paragraph 12 of the Ministry of Housing, Communities and Local Government Guidance issued in 2019 states that ‘an acquiring authority should be sure that the purposes for which the compulsory purchase order is made justify interfering with the human rights of those with an interest in the land affected.’

6.4.2 Officers acknowledge that these proposals will have an effect on the human rights of those with interests in the CPO land as set out below, however, there are no indications of significant issues that may arise and on balance it the public benefit of these proposals outweigh the impact of those affected. Regard has been taken in particular to the provisions of Article 1 of the First Protocol to the European Convention on Human Rights and, in the case of a dwelling, Article 8 of the Convention as recommended by the guidance.

6.4.3 Article 1 of the First Protocol to the ECHR

6.4.4 Article 1 of the First Protocol provides that: “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”.

6.4.5 The CPO will affect the Article 1 rights of the present owner/occupiers if confirmed by the Secretary of State. However, there will be no violation of those rights if we can establish a strong case in the public interest and lawful as required by Article 1 of the First Protocol. If a CPO is made, the Council will be required to demonstrate the public interest. In this case there is a clear case in the public interest because of strong transport and economic benefits of the project to the area. Those directly affected by the CPO will be entitled to compensation as provided by law, such compensation to be settled in the absence of agreement by the impartial Upper Tribunal (Lands).

6.4.6 Article 8

6.4.7 Article 8 of the Convention provides as follows: “(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 freedom of others”.

6.4.8 Article 8 is a qualified right and interference can be justified in appropriate cases by reference to Article 8(2).

6.4.9 The CPO will be made pursuant to section 239 of the Highways Act 1980 which authorises ECC to acquire land compulsorily for the construction of and improvement of highways subject to following the procedures laid down in the Acquisition of Land Act 1981. Again, ECC will need to demonstrate that there is a compelling case in the public interest to acquire the CPO land and the public benefit will outweigh the private loss. In the circumstances, the compulsory acquisition of the CPO land will not conflict with Article 8 of the Convention.

6.4.10 Article 6

6.4.11 Article 6 provides that: “In the determination of his civil rights and obligations..... everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law”.

6.4.12 The CPO when made will be publicised and all those affected by the Order will be notified and have the opportunity to make objections and to be heard at a public inquiry before a decision is made on whether or not the CPO should be confirmed. A right of legal challenge exists to this process in accordance with section 23 of the Acquisition of Land Act 1981. Any dispute as to compensation payable falls to be determined by the Upper Tribunal (Lands).

6.4.13 Application of Human Rights to the Proposed CPO

6.4.14 To the extent that the Order would affect individual rights the proposed interference with them would be in accordance with the law, proportionate and necessary in the public interest in order to secure the redevelopment of the CPO land and improvements and benefits that the project will bring.

6.4.15 All of those whose Article 1, Article 6 and Article 8 rights would be affected by the CPO will have an opportunity to object to it and to have their objection considered at an independent and public hearing. If the order is confirmed, then anyone considering that the order is invalid as a result of a legal error has a statutory right to go to court to challenge the order.

6.4.16 Appropriate compensation will be available to those entitled to claim it under the relevant provisions of the compensation code and any disputes over compensation are determined by an impartial tribunal established by law.

7 Equality and Diversity Considerations

- 7.1 The Public Sector Equality Duty applies to the Council when it makes decisions. The duty requires us to have regard to the need to:
- (a) Eliminate unlawful discrimination, harassment and victimisation and other behaviour prohibited by the Act. In summary, the Act makes discrimination etc. on the grounds of a protected characteristic unlawful
 - (b) Advance equality of opportunity between people who share a protected characteristic and those who do not.
 - (c) Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.
- 7.2 The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, marriage and civil partnership, race, religion or belief, sex, and sexual orientation. The Act states that 'marriage and civil partnership' is not a relevant protected characteristic for (b) or (c) although it is relevant for (a).
- 7.3 The Equalities Comprehensive Impact Assessment indicates that the proposals in this report will not have a disproportionately adverse impact on any people with a particular characteristic.

8 List of Appendices

- 8.1 Appendix 1 – Confidential Appendix
- 8.2 Appendix 2 – Land Assembly Plans (2A and 2B) and Schedule (2C)
- 8.3 Appendix 3 – Equalities Comprehensive Impact Assessment

9 List of Background papers

- 9.1 Chelmsford North East Bypass report to Cabinet dated 19 April 2022 (FP/977/02/21).
- 9.2 Proposed Beaulieu Park Railway Station and Chelmsford North East Bypass Report to Cabinet dated 27 July 2023 (FP/187/07/23).
- 9.3 Chelmsford North East Bypass (CNEB) Section 1A – Procurement of a Works Contract report to Cabinet dated 16 January 2024 (FP/284/11/23).

I approve the above recommendations set out above for the reasons set out in the report.	Date
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Councillor Kevin Bentley, Leader of the Council	05/04/24
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In consultation with:

Role	Date
Executive Director, Corporate Services (S151 Officer)	28.03.2024
Stephanie Mitchener on behalf of Nicole Wood Director, Legal and Assurance (Monitoring Officer)	28.03.2024
Laura Edwards on behalf of Paul Turner	