

**Forward Plan reference number: FP/875/11/20**

<b>Report title: A127/A130 Fairglen Interchange – Decision to acquire land by Compulsory Purchase</b>	
<b>Report to:</b> Cabinet	
<b>Report author:</b> Councillor Kevin Bentley, Deputy Leader and Cabinet Member for Infrastructure	
<b>Date:</b> 19 January 2021	<b>For:</b> Decision
<b>Enquiries to:</b> Paul Crick, Director for Performance, Investment and Delivery, Kris Corbett, Project Sponsor - email kris.corbett@essex.gov.uk	
<b>County Divisions affected:</b> Thundersley, Basildon Pitsea, Wickford Crouch, Rayleigh South, Rayleigh North	

### **Confidential Appendix**

This report has a confidential appendix which is not for publication as it includes exempt information falling within paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972, as amended

## **1. Purpose of Report**

- 1.1 To ask the Cabinet to agree that a compulsory purchase order can be made if necessary, to progress the Fairglen Interchange project. To ask the Cabinet to agree that a Side Roads Order can be made and/or traffic regulation and speed limit orders if necessary, to progress the Fairglen Interchange project.

## **2. Recommendations**

- 2.1 Agree that if the Director, Performance, Investment and Delivery is unable to acquire the land shown in Appendix 2.1 by agreement on reasonable terms he may, after consulting the Leader of the Council and the Director, Legal and Assurance, authorise:
  - a) the making of one or more compulsory purchase orders for the construction of the A127/A130 Fairglen Interchange project for the purposes set out in schedule at Appendix 3 and publicise the same
  - b) the undertaking of additional processes (Side Roads Orders and/or traffic regulation and speed limit orders) required for the changes of the existing road network as a result of the project, and
  - c) to pursue the Orders to confirmation.
- 2.2 Authorise the Director for Performance, Investment and Delivery to agree minor changes to the proposed CPO schedules (Appendix 2.1) and to the boundaries

of the land to be acquired (Appendix 3) after consulting the Leader of the Council.

2.3 To agree an updated project budget of £32.3m. This is a net increase of £3.6m from the value previously approved in the Capital Programme, reasons for which are included at 6.1:

- The £3.6m is profiled as follows: 2021/22 - £4.7m reduction; 2022/23 - £6.3m increase; 2023/24 - £2m increase
- £500,000 is a transfer from existing budget allocation for Cycling Infrastructure in 2022/23

### **3. Summary of issue**

#### **Background**

3.1 The A127 corridor is a vitally important primary route for the south Essex area which connects the M25, Basildon and Southend (including London Southend Airport). It also provides access to the wider areas of Basildon, Brentwood, Billericay, Canvey Island, Rochford and Wickford and has strategic links to the A130, A129, A13 and A12.

3.2 The A127/A130 Fairglen interchange is the primary interchange to and from the Southend Central Area. Every weekday, the interchange carries over 110,000 vehicles in a 12-hour period. It suffers significant congestion and journey time delays during peak periods. The interchange comprises of the Fairglen roundabout at the junction of the A127 and the A1245 to the north of the interchange, and the Rayleigh Spur roundabout at the junction of the A130 and the A1245 to the south of the interchange.

3.3 The main reasons for the requirement of the A127/A130 Fairglen Interchange project are to:

- To manage congestion and improve journey time reliability.
- Facilitate the future housing and jobs growth across South Essex (up to 90,000 homes between 2014 - 2037 as identified in the South Essex Housing Market Assessment addendum May 2017 along with up to 62,675 jobs over the same period). This is further confirmed by Basildon, Rochford and Castle Point's local plans highlighting the need for housing as well as the recognition in the A127 Task Force which highlights this along the full extent of the A127 Corridor.
- To provide additional capacity at the main interchange and extend the life of the junction.

3.4 The deliverables of this project tie into ECC's policy objectives of:

- Enable Essex to attract and grow large firms in high growth industries,
- Target economic development to areas of opportunity; and
- Facilitate growing communities and new homes.

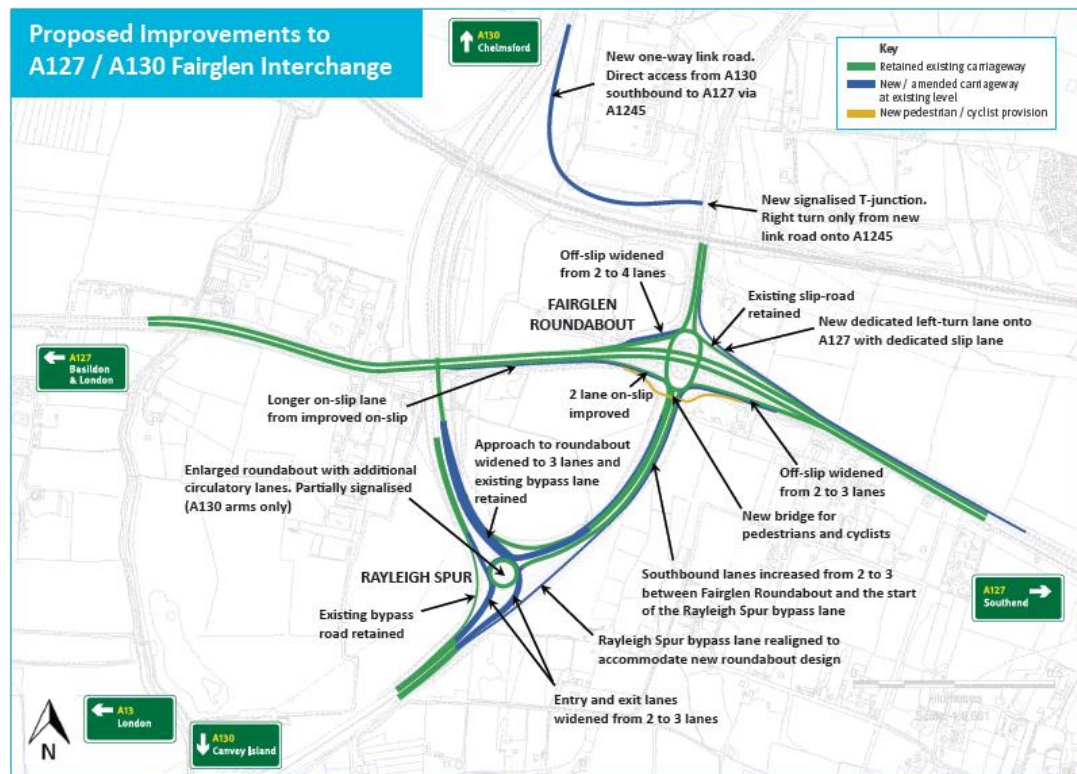
- 3.5 A Cabinet decision was taken in November 2019 (Item 8 - FP/520/09/19) to proceed with the project and to go out to tender via the Crown Commercial Services (CCS) Framework and to allow delegation of powers to award the project to a principal contractor. The current position is that a mini competition tender process was completed on 4 September 2020, and returns have been assessed. The Council has identified a preferred bidder. It is anticipated that the contract will be signed in February or March 2021 once the Department for Transport (DfT) final business case has been approved.

### **The Project**

- 3.6 There are two schemes in this project:

- the A127/A130 Fairglen Interchange upgrade by increasing the number of lanes in many locations; and
- construction of a New Link Road providing a more direct and simpler route for traffic heading southbound on the A130 to directly access the eastbound A127 via the A1245.

- 3.7 Additionally, the lead-in slip to the A127 eastwards will be lengthened. The project also includes additional lanes at the Rayleigh Spur roundabout and dedicated slip lanes on the Fairglen roundabout.
- 3.8 Provisional plans have been developed for a more wide-ranging longer-term proposal, but, at this time, no funding exists to progress this full longer-term scheme. The long-term option would potentially be necessary after 15 years if traffic grew significantly.
- 3.9 The diagram below shows a summary of the various elements of the proposed project the subject of this report:



3.10 The new link road will alleviate traffic flows at Fairglen by avoiding the need for vehicles travelling from Chelmsford, southwards down the A130, to complete two sides of the 'Fairglen triangle' south of the A127 to access the A127 heading eastbound towards Southend. This will save time and shorten journeys by approximately 1km. This is the 'short term' option and the long-term option would potentially be necessary after 15 years if traffic grew significantly. The short-term solution is fully compatible with the long-term option should that need to be implemented in the future.

3.11 The transport improvements of the delivery option will result in a range of measurable impacts on traffic and travel conditions and sustainability which will include:

- Reduced congestion and improved journey time reliability – measured by traffic volume and relative difference in peak/off peak journey times;
- Facilitation of the delivery of identified housing and employment growth in line with the Core Strategies / Local Development Plans – measured by the number of homes/jobs delivered / occupied by the end of each neighbouring districts local plans
- Improved connectivity – reflected in reduced absolute journey times on key routes;
- High quality of life and natural environment – reflected through reduced numbers of collisions, carbon emissions and level of noise; and
- In addition to the improvements for motorists, a new walking and cycling bridge is planned which aims to offer significant benefits for sustainable transport users.

- 3.12 ECC will need to potentially use its powers to compulsorily purchase the land identified on the land plots drawing in Appendix 2.1 and detailed in the Schedule in Appendix 3 for the purpose of constructing the project.
- 3.13 This report requests the Cabinet to authorise the making and publication of the necessary CPOs to avoid potential delays and excessive costs should land negotiations, which are ongoing, prove unsuccessful. Acquisition is required for both temporary and permanent situations (as denoted by the colour of the land plots on the CPO plan). A Side Roads Order is also required and is proposed to be made and publicised at the same time.
- 3.14 Appendix 3 sets out the detail of the various plots and the purpose for which they need to be acquired. The CPO schedule will be based on, but not be the same as this Appendix as some of the information, such as the remarks columns, will not form part of the CPO schedule. Appendix 2.1 is the detail of the proposed CPO plan showing the plot boundaries, numbers and colouring. Appendix 2.1 shows the land at Appendix 2.1 with the engineering layout overlaid.

### **Land Negotiation**

- 3.15 In order to construct the project, ECC will need to acquire significant land outside the current highway boundary.
- 3.16 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. Two public information events and a formal public consultation have been carried out and all the feedback and recommendations received during the engagement programmes have been analysed and incorporated into the preliminary design where feasible. The Cabinet have previously considered outcome of the consultation and selected the proposed route because of the considerable benefits that the project would bring.
- 3.17 ECC has always been and is continuing to be in regular contact with local landowners. To deliver the project, it is required to purchase land for the permanent works as well as licensing land for temporary situations of additional land for use as site compounds. At the current time it is considered that there is agreement in principle with all identified landowners such that it might not be necessary to fall back on the CPO, but the CPO will give ECC the ability to continue on its projected time line for delivery of the project if negotiations did stall or break down.
- 3.18 The land needed for the project is shown at appendix 2.1 marked with the following colour scheme:

Type of land	Marking on map (appendix 2.1)	What needs to be acquired
Title	pink	Freehold title required to be permanently

		acquired for the highway
Title mitigation/s246	Pink hatched	Freehold title required to be acquired , environmental migration associated with planning requirements for construction of improved/new road
Easement/s250 right	blue	Permanent easement required for ECC for example for drainage purposes
Essential licence	Green hatched	Temporary use of land to be acquired for access or construction purposes. Site would be returned to landowner at completion of construction or when no longer required.
Title/private means of access	purple	Permanent easement required for a right of access to benefit of third party
Licence/ private means of access	orange	Land required temporarily so that we can create a private access for the benefit of third party and then hand it back to the owner once it has been constructed.
Land already in ECC ownership	White bounded with pink	Other interests in land which is already owned by ECC, largely existing public highway to be improved or converted into into new length of road

Licence PMAs (orange) have been used where there is a single beneficiary who is the landowner, so the works are undertaken and handed back. Title PMAs (purple) have been used where a third-party beneficiary exists, or the access serves multiple affected parties so the acquiring authority can acquire the land and establish the right(s) without the concurrence of the relevant landowner.

3.19 Some plots (identified as 1/1, 2/1, 2/1a, 3/1, 3/1a, 3/1b, 3/1d, 4/1, 5/1 and 6/1 on Appendix 2.1 to this report) are already in the ownership of ECC and some plots are already public highway (3/6, 3/6a and 3/6b, owned by the Secretary of State for Transport; 3/4c and 4/2, owned by named private parties).

Negotiations for the remaining land interests are progressing but ultimately, they may not succeed. Although we believe that the landowners accept that they need to sell, we may simply be unable to agree appropriate terms for the purchase. If we cannot agree reasonable terms, then we need to make a compulsory purchase order (CPO). There are also some small areas of land (plots 3/11, 3/11a, 4/6, 4/6a and 4/6b) where it has not been possible to identify the owner with certainty at this time (although there are claimed owners), and this might need to be resolved by the CPO process for 'unknown owners' if there is no one to negotiate with.

3.20 The strategy for land negotiations will be that ECC make a compulsory purchase order, which will have all affected landowners on the schedule. Then as negotiations continue, once an agreement has been reached with landowners, the affected landowner will be removed from the schedule. This way, there will be the minimal possible plots of land that will need to be included in the CPO process.

- 3.21 Some of the land needed for the project is owned by National Grid and subject to rights in favour of BT, UK Power Networks, Essex and Suffolk Water, the Secretary of State for Transport and Network Rail. The one lane link road, designed with shoulders, will cross National Grid Land and will join the A1245 at a new signalised junction with right turn capability only. Should negotiations be unsuccessful, this will require an additional step in the formal CPO process should it relate to their operational land directly connected to their undertakers' statutory functions (rather than non-operational land).
- 3.22 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 or at least to complete negotiations before any Public Inquiry as part of the confirmation process. 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. The project programme and budget has always included provision for the potential need of a Public Inquiry should this become unavoidable. It should be noted that the construction contract will be awarded at a time when the CPO has not yet been confirmed so there is a small risk that if the CPO is not confirmed, or not fully confirmed, will have a contractor not be able to construct the scheme fully. We will not however appoint the contractor until sufficient land to substantially construct the scheme is secured.

## **Funding**

- 3.23 The DfT has released £1.5m for project development costs but is holding £13.5m of funding for the project and will not release this money until the DfT Final Business Case is signed off and all land issues are resolved/agreed. ECC funding for the Local Growth Fund (LGF1) portion of the project amounts to £2.0m.
- 3.24 The South East Local Enterprise Partnership (SELEP) is also providing funding to the sum of £6.235m towards the cost of the Link Road and Slip Road only, which will be constructed at the same time and under the same contract as the rest of the project. ECC funding of £3.6m will be put towards the construction cost of the Link Road and Slip Road only. Together with a further £5.498m ECC is funding the land acquisition costs and process as well as statutory compensation.
- 3.25 Due to the need to clarify funding issues with the DfT, and following authority to do so from the November 2019 Cabinet paper, tenders have already been invited which anticipate a construction start date of May 2021.
- 3.26 Forward funding by DfT and SELEP has already been provided to enable project development to this stage.

## Implementation of the Project

3.27 The latest project programme (best case scenario) is all dependant on the majority of landowners agreeing to voluntary negotiations of land acquisition, that there is not a public inquiry invoked as part of the CPO process and that key significant areas of land are acquired through negotiation. The key dates for this best-case scenario are:

- finalising designs by January 2021;
- contract award by April 2021;
- land assembly no later than May 2021;
- construction commencing in May 2021;
- open to traffic February 2023,

It is therefore possible that the scheme could be delayed significantly beyond these dates.

3.28 The works contract details are:

- Main contractor selected from competitive tender process that has been completed from Lot 3 (values of £10m - £30m) of the Crown Commercial Services (CCS) Construction Works and Associated Services (RM6088) framework.
- ECC utilised a 50% Price and 50% quality evaluation criteria as highlighted in the November 2019 Cabinet paper; and,
- The contract will be an NEC4 Engineering and Construction Contract (ECC), Option A (fixed price, priced activity schedule).

3.29 It is anticipated that, following confirmation, the land comprised in the CPO will need to be taken into ECC control by May 2021 in order to allow the commencement of the construction works. The contractor will only be appointed if the land that has been acquired, either through voluntary negotiation or CPO, allows the contractor to continue with construction and is able to revisit areas of land that are being resolved through the legal process during preliminary construction activities. Until the contractor has been appointed it is not possible to be more specific as this will depend on the contractor's method of working and programme.

3.30 Planning permission was obtained in December 2019. There are a number of pre-commencement steps to be addressed before construction can commence.

## 4. Options

4.1 **Preferred Option** - ECC could progress with the CPO process and publish the orders to mitigate land ownership issues in order to allow receipt of the £13.5m DfT funding at the anticipated time and to progress with the project with little to no delays.



- 4.2 ECC could deliver the project relying on acquiring the land by agreement only. This would increase the risk of delivery of the project as landowners would have no incentive to negotiate reasonable terms and the project could be delayed. This delay could also jeopardise the tender returns already received from contractors as well as risk the £13.5m DfT funding. It would also not resolve the potential unknown owner land issue without redesign.
- 4.3 ECC could decide not to progress the project. This would have a significant abortive cost due to potential Revenue recharging of the time already spent on the project and there is also a risk that monies would have to be paid back to DfT and SELEP which has already been forward funded.

## **5. Links to Essex Vision**

5.1 This report links to the following aims in the Essex Vision:

- Provide an equal foundation for every child – Allowing the transportation of Children to education spaces in an easier and more direct way.
- Develop our County sustainably – Allowing easier access to the future development in the area and to assist growth. Also, with the addition of the foot/cycle bridge, we will be promoting sustainable modes of transport.
- Connect us to each other and the world – Tackling congestion in this busy major interchange.
- Share prosperity with everyone – Allowing the attraction of businesses to the local area by improving access and reducing congestion.

5.2 This links to the following strategic aims in the Organisational Plan:

- Enable inclusive economic growth – As highlighted above.

## **6. Issues for consideration**

### **6.1 Financial Implications**

6.1.1 The updated project cost is £32.3m including spend in prior years as detailed in Appendix 5. This is a net increase of £3.6m from the value previously approved in the Capital Programme

- The £3.6m is profiled as follows: 2021/22 - £4.7m reduction; 2022/23 - £6.3m increase; 2023/24 - £2m increase.
- This addition will be funded from ECC resources.
- £500,000 is a transfer from existing capital budget allocation for Cycling Infrastructure in 2022/23 (The Cycling component within the Fairglen project has a value above £500,000 and so this use of the Cycling Infrastructure budget meets the original objectives of that budget as well as supporting the Fairglen project. By reprofiling the Cycling Infrastructure programme, it has been possible to manage the project deliverables without compromising those objectives)

- 6.1.1 The existing Medium Term Resource Strategy (MTRS) does not include the revenue cost of borrowing associated with this net addition. The impact is £230,000 borrowing costs per annum. The Cycling Infrastructure transfer of £500,000 was assumed to be financed from ECC borrowing within the Cycling Programme and that assumption continues after its transfer to Fairglen, meaning that there is no change to the Revenue Budget impact as a whole.
- 6.1.2 It should be noted that the cost escalation is not related to delays in the project, and the main drivers for the cost escalation are in relation to satisfying additional DfT requirements; satisfying additional Statutory undertakers requirements; and additional costs arising from Covid-19 requirements such as distancing work arrangements.
- 6.1.3 ECC will be liable for payments in relation to the land to be acquired on a temporary or permanent basis and other statutory compensation payments and this has been included in the budget provision.
- 6.1.4 The financial and reputational risk to ECC has been considered throughout the design process and the project has been developed to minimise the number of landowners affected by the potential CPO process and also the amount of land to be acquired. This has contributed to producing a benefit/cost ratio (BCR) score of between 4.9 and 7.2 (all dependant on future growth scenarios from no growth to high growth) and a BCR score of above 2 is labelled as a very high value for money project.
- 6.1.5 If any of the recommendations included in this report are not approved there is a risk that the project costs could escalate, and the delivery profile would be affected.

## **6.2 Legal implications**

- 6.2.1 ECC has the power to make a compulsory purchase order for highway purposes in relation to the local road network. A Side Roads Order will be needed to make the changes to the existing roads that are affected.
- 6.2.2 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 scheme 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.
- 6.2.3 It is common practice and acknowledged in the Ministry of Housing, Communities and Local Government guidance, that negotiations with landowners should sensibly continue alongside a formal CPO process.
- 6.2.4 It should be noted that awarding the construction contract before all the land is acquired does expose the council to risk if the compulsory purchase order is not fully confirmed.

## **7. Human Rights and Equality and Diversity implications**

- 7.1 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.’
- 7.2 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.

### **Article 1 of the First Protocol to the ECHR**

- 7.3 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”*

- 7.4 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).

### **Article 8**

- 7.5 **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”.*

- 7.6 Article 8 is a qualified right and interference can be justified in appropriate cases by reference to Article 8(2).
- 7.7 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.

## **Article 6**

- 7.8 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”*

- 7.9 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).

## **Application of Human Rights to the Proposed CPO**

- 7.10 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.
- 7.11 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.
- 7.12 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.

## **Public Sector Equality Duty**

- 7.13 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.

7.14 The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, marriage and civil partnership, race, religion or belief, gender, 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).

7.15 The equality impact assessment (EqIA) carried out on 15 September 2020 at Appendix 4 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**

- Appendix 1 – Plan of the Project
- Appendix 2.1 – Land reference plans
- Appendix 2.2 – Land reference plans (with design)
- Appendix 3 – Land reference Schedule
- Appendix 4 – Equality Impact Assessment
- Appendix 5 – Project Budget (Confidential)

## **9. List of Background papers**

- BP1 - A127/A130 Fairglen interchange scheme, Consultation report – October 2018
- BP2 - November 2019 Cabinet decision
- BP3 - Planning application/permission - [Link to A127/A130 Planning application](#)