

LONDON BOROUGH OF BRENT

EXECUTIVE - 13 OCTOBER 2003

FROM THE DIRECTOR OF ENVIRONMENT

FOR ACTION

NAME OF WARDS
Tokyngton, Stonebridge

REPORT TITLE : STADIUM ACCESS CORRIDOR (SAC)

1. SUMMARY

- 1.1 The Stadium Access Corridor (SAC) was proposed to improve access to the Wembley Park Estate and the new Wembley National Stadium and in so doing aid regeneration of the area and create a processional route for stadium event traffic from the North Circular Road, which would be capable of operating tidally. The scheme has received planning consent.
- 1.2 The SAC was to be funded principally from the Single Regeneration Budget (SRB) but also with contributions from section 106 sources. When construction of the National Stadium was delayed the SRB funding was frozen and it was not possible to progress the project until the present time. However, the timescales do not allow construction of the full scheme before stadium opening in September 2005 and due to rising cost estimates, there is now a considerable shortfall in available funding.
- 1.3 This report recommends construction of the first section of the remaining (phase 2) of the SAC project, that is the section of Great Central Way between Hannah Close and Fourth Way. (Phase 1) Drury Way to Hannah close is currently under construction within the Estate Access Corridor (EAC project). Significant benefits will be provided, both in operational and regeneration terms, by the construction of this element. Discussions with the London Development Agency (LDA) have confirmed that construction of this phase would not jeopardise the completion of the project at a later date, either on the approved alignment or another alignment, in order to facilitate further regeneration opportunities on the Wembley Trading Estate. The LDA are in the process of appointing a consultant to review the regeneration opportunities associated with the completion of the SAC.

- 1.4 The following abbreviations are used in this report:
- CPO: Compulsory Purchase Order
 - EAC: Estate Access Corridor
 - LDA: London Development Agency
 - SAC: Stadium Access Corridor
 - NCR: North Circular Road
 - SRB: Single Regeneration Budget
 - S106: Section 106 Town and Country Act 1990
 - WNSL: Wembley National Stadium Ltd

2. RECOMMENDATIONS

- 2.1 Members agree that the Council should exercise its compulsory purchase powers to acquire the land for highway widening to complete Section 1 phase 2 of the SAC scheme and the Borough Solicitor be authorised to serve all relevant notices in connection with the compulsory purchase of such necessary land.
- 2.2 That the Director of Transportation be authorised to negotiate with the frontagers and acquire voluntarily the requisite land from the frontagers, whilst the CPO is being progressed. .
- 2.3 Members agree that drawing KBKSB/SAC/PA/26A (Extract) or such other drawing prepared in substitution be regarded as the scheme plan to facilitate design for CPO purposes, and ultimately for construction.

3.0. FINANCIAL IMPLICATIONS

- 3.1 The SAC total costs have risen in estimate from £18m to in excess of £24m. Currently, the secured funding under SRB is £11.5m and there is a further £2m from the Wembley National Stadium development under s106 provisions, giving total provision of £13.5m. There is therefore currently an £10.5m funding gap. It is unlikely at this stage that external funding will be identified and so the full burden will fall on the Council's capital programme. No resources have yet been identified to meet these costs".
- 3.2 The estimated cost of construction of section 1 of the SAC is currently £6.65m as shown in table 2 below. Works are intended to include the erection of both west footbridge at a cost of £750,000, which was deleted from the EAC scheme, but is now included within the £6.65m estimate. However because of the overall funding gap Members may direct that the west footbridge is not progressed at this stage and is deferred until the progression of Section 3 is considered. Such decision may be made at a future meeting of the Council when tendered prices are available.

3.3 The proposals provide for a scheme which is justified in its own right, and is 'stand alone'. It does not oblige the Council to progress further land acquisitions and works beyond Section 1, notwithstanding the existing obligation that already exists under the planning consent with WNSL. The Construction of Section 1 will, to some extent, mitigate such obligations.

3.4 Further details and risk analysis are provided in paragraph 7.21 and following.

4.0 STAFFING IMPLICATIONS

4.1 Any future SAC works would be implemented in a similar manner to the EAC whereby Environment Services (Transportation) oversee the project but commission consultants to act as project managers on behalf of the Council and coordinate the detailed delivery of the scheme. The SRB Team within the Policy and Regeneration Unit would monitor SRB expenditure and output achievements in respect of the scheme in conjunction with the Wembley Partnership Board.

5.0 ENVIRONMENTAL IMPLICATIONS

5.1 The SAC objectives include the reduction of traffic congestion on stadium event days, enabling greater access to the Wembley Park Estate, the creation of a more attractive processional route to the stadium and the regeneration of the wider area – all of which would improve the local environment.

5.2 In addition, new road construction methods promote opportunities for greater materials reuse and recycling (e.g. road shavings, crushed glass sub-base, etc) thereby reducing the impact on natural resource use for the scheme. Such options will be fully considered within the procurement process.

6.0 LEGAL IMPLICATIONS

6.1 The Council has the power to acquire the requisite land voluntarily or by Compulsory Purchase under sections 239, 240 and 246 and 250 of the Highways Act 1980

6.2 The Council will need to comply with the procedure for making and confirming compulsory purchase orders set out in the Acquisition of Land Act 1981, if the Council decides to acquire the land under its compulsory purchase powers.

- 6.3 The effect of the procedure is that, once the CPO is made, it must be notified to relevant persons and publicised, following which it will be submitted to the Deputy Prime Minister for confirmation. Any person may object to a CPO and, if an objection is made and not withdrawn, a public local inquiry may be held if the Deputy Prime Minister deems it fit for such inquiry to be held. Any public Inquiry will be conducted by an Inspector appointed by the Deputy Prime Minister who will hear evidence from any persons objecting to the CPO and from the Council. The Inspector would then submit a report on the Public Inquiry and his/her recommendations to the Secretary of State who would then decide whether or not to confirm the CPO. Before confirming the CPO the Deputy Prime Minister would have to be satisfied that there are no planning or financial obstacles to the implementation of the scheme and there is a compelling case for the CPO in the public interest.
- 6.4 Thus a CPO cannot be acted upon until sufficient notice has been given to the owner of the land and it has been confirmed by the Office of the Deputy Prime Minister. Therefore the Council will not actually be in a position to acquire the requisite land until the compulsory purchase order has been confirmed by the Office of the Deputy Prime Minister.
- 6.5 Members must bear the implication of the Human Rights Act 1998 in mind when making their decision. The Act came into force on 2 October 2000. The Act effectively incorporates the European Convention on Human Rights into UK law and requires all public authorities to have regard to Convention Rights. In making their decisions Members therefore need to have regard to the Convention. The rights which are of most relevance to local authorities in dealing with Compulsory acquisition are summarised below.

Article 8 - The right to respect for private and family life, the home and correspondence

Article 1 of Protocol 1 - The right for every person to be entitled to the peaceful enjoyment of their possessions

- 6.6 The right that is of particular significance to Members' decision in this matter is that contained in Article 1 of Protocol 1 (peaceful enjoyment of possessions).
- 6.7 Article 1 of Protocol 1 provides that no-one shall be deprived of their possessions except in the public interest and subject to the conditions provided for by law, although it is qualified to the effect that it should not in any way impair the right of a state to enforce such laws as it deems necessary to control the uses of property in accordance with the general interest.

- 6.8 In determining the level of permissible interference with enjoyment, the courts have held that any interference must achieve a fair balance between the general interests of the community and the protection of the rights of individuals. There must be reasonable proportionality between the means employed and the aim pursued. The availability of an effective remedy and compensation to affected persons is relevant in assessing whether a fair balance has been struck.
- 6.9 Therefore, in reaching their decision, Members need to consider the extent to which the decision may impact upon the Human Rights of affected occupiers and to balance these against the overall benefits to the community which the overall SAC scheme would bring. Members will wish to be satisfied that interference with the right under Article 1 of Protocol 1 is justified in all the circumstances and that a fair balance would be struck in the present case between the protection of the rights of individuals and the public interest.
- 6.10 It is relevant to the consideration of this issue that, should the scheme proceed, affected occupiers will be entitled to receive compensation and reimbursement of professional fees and take into account the benefits to the local community the road will bring.
- 6.11 Members need to ensure that the Council has sufficient funds to undertake the Scheme before making a CPO. This is because although the Council will not be obliged to act on a confirmed CPO, certain financial consequences will result from abandonment. The consequences of abandoning a confirmed CPO depends on (a) whether a notice to treat or entry has been served on the owner of the land or not and (b) whether the Council has entered the land following the service of the notice or made a General Vesting Declaration in respect of the land.

Where a notice to treat has not been served the owner can serve a Blight notice (this can only be served if the annual value of the property does not exceed £24,600) on the Council if notwithstanding reasonable endeavours he is unable to sell the property except at a substantially lower price than he might reasonably have been expected to obtain.

Where notice to treat and entry have been served, the owner can serve a Blight Notice as above, however the Council is under an obligation to inform the owner of the withdrawal of the notices or expiry as the case may be (as notice to treat have a life span of three years from date of service) and will be liable to pay compensation to the owner for all losses and expenses occasioned to him by the giving of the notice and its ceasing to have effect. The amount of compensation shall in default of agreement be assessed by the Land's Tribunal. Interest is payable on the Compensation.

It is too late for the Council to abandon the CPO where the Council has entered on the land following notices to treat and entry. The Council is obliged to pay compensation to the owner in this situation. The level of compensation payable is determined in accordance with Section 5 Land Compensation Act 1961. This basically provides that the Council must pay the market value for the property or if special property the cost of equivalent reinstatement elsewhere. In addition to this the Claimant is entitled to compensation for disturbance and if applicable severance and injurious affection. This also applies where the Council has acquired the land following a General Vesting Declaration.

- 6.12 The Council is in bound with WNSL, by virtue of the s106 agreement, to proceed with the SAC. This report seeks approval to progress with Section 1, whilst Sections 2 and 3 may follow at a future date if sufficient funds are identified. If unsurpassable funding difficulties remain, the Council would be most unlikely to be obliged to proceed with these Sections.
- 6.13 The s106 agreement sets out a proposed timeframe for completion of the SAC of 10 years. Whilst condition 3 of the planning consent for the Stadium restricts the number of major events using the upper tier capacity to no more than 22 per year (save for certain exceptions) until the SAC is completed, further negotiations would take place in the light of the Council's SAC proposals.

7.0 DETAILS

EXISTING SITUATION

- 7.1 Development on the Wembley Park Estate has been carried out on a piecemeal basis over the last 20-25 years by occupiers of the Estate and, whilst public transport is reasonable at points on the periphery of the Estate there are inadequate linkages between facilities and accessibility is poor.
- 7.2 The road system is overloaded and confusing in its layout. Until the closure of the old Wembley Stadium this was exacerbated on stadium event days when the roads, particularly in the southern and eastern parts of the Estate, became severely congested. The tortuous one way system also provided a wholly inadequate means of circulation within the Estate.

FUTURE DEVELOPMENT PROPOSALS

- 7.3 The new Wembley National Stadium was granted planning consent in August 2002 and demolition work commenced in September of that year. The stadium will provide for an increased capacity totalling 90,000 and is currently estimated to be completed in September 2005.
- 7.4 Quintain Estates and Development Plc subsequently purchased land surrounding the National Stadium, including the Palace of Industry and Palace of Arts sites.

- 7.5 They are now seeking to deliver a phased comprehensive mixed-use development for their own landholding (55 acres) which is consistent with the Council's objective to promote the regeneration of the wider Comprehensive Development Area (77 acres), the Wembley Industrial Estate to the east, and the whole of Wembley itself.
- 7.6 Early projections from Quintain suggest upwards of 8000 new dwellings and 7000 new jobs could be established over a 10-20 year development programme. In the light of these future developments the LDA is commissioning a report to review the regeneration case for completing the equivalent of sections 2 and 3 of the SAC in order that sufficient funds can be sought from other sources.

INFRASTRUCTURE DEVELOPMENT

- 7.7 Both the EAC and SAC were initially proposed as part of the Sir Norman Foster and Partners Wembley Park Masterplan. The Masterplan identified an improved transport infrastructure as key to the regeneration of the area, including a realignment of roads on the Wembley Park Estate to create a clear approach to the Stadium and to create opportunities for new development.
- 7.8 The Council approved the Foster Masterplan in April 1996 and used this as a basis for the Wembley Stadium Area Inset Plan of the Adopted Unitary Development Plan and its associated Policy WS18.
- 7.9 Further work in 1997, by highway consultants Scott Wilson Kirkpatrick, assessed the most effective highway improvement proposals that balanced the commercial and residential needs of the area with the activity at the Wembley Complex.
- 7.10 The proposals and a subsequent updated alignment were approved by the Council's Environment Committee (20.10.97 and 07.07.99) and planning permission was granted at the meeting of the Planning Committee 8th Feb 2001.
- 7.11 The Replacement UDP 2000-2010 includes an updated Wembley Regeneration Area Inset Map, incorporating the SWK alignment, together with Policy WEM15 which specifically refers to the SAC and states that an upgraded and realigned South Way and Great Central Way will be secured as the main road access to the Stadium and Stadium Complex.
- 7.12 The Section 106 agreement attached to the planning consent for the new Wembley National Stadium included the obligation upon the Council to use "reasonable endeavours" to ensure that "a new road of at least three lanes....between Hannah Close and that part of First Way which is adjacent to Gate 5 of the existing stadium" is completed to by 2012.

DESCRIPTION OF SAC PROPOSALS (Submitted 1997-2001)

- 7.13 The original SAC scheme was designed to be a three lane corridor tidal flow highway (meaning that the middle lane can be used for either east or westbound traffic depending on circumstances) running from the junction of Hannah Close and Great Central Way to opposite the proposed access to the new National Stadium (Gate 5)
- 7.14 The route of the highway is primarily along the existing stretches of South Way and Great Central Way although there are short sections where the new route consists entirely of new build highway.
- 7.15 Potential increased traffic flows from Quintain development were not included in the traffic flow calculations for the SAC. Any such additional traffic will mean further assessment of the Drury Way/North Circular Road junctions.
- 7.16 The road would consist of a 10.5 metre wide carriageway with 4 metre wide foot and cycle ways on both sides, together with areas of working space which would become landscaping where this can be accommodated or returned to the original landholders on completion of the works.
- 7.17 The road would provide a direct exit route for event traffic from the Stadium car/coach park to Drury Way, without the need to use the Fifth Way/Fourth Way one-way system. The new road would also mean that the previous system of closing the Great Central Way route to traffic entering the Estate at times of major events at the Stadium would not now be required.
- 7.18 The tidal flow facility will be used to allow two lanes of traffic to access or egress the stadium, whilst allowing a single lane counter-flow in the opposite direction. The previous position where access to the Estate for occupiers was virtually impossible during stadium events would be eliminated. On non-event days it is expected the central lane will operate as a right turn facility west bound.
- 7.19 Although part of the original EAC scheme, following its SRB reappraisal, the eastern section of Great Central Way between Hannah Close and Drury Way was separated from the remainder of the EAC to become the SAC Phase 1.
- 7.20 For descriptive, financial and construction purposes the SAC Phase 2 is often seen in three sections
- | | |
|-----------|---|
| Section 1 | Hannah Close to Fourth Way |
| Section 2 | Fourth Way to Second Way |
| Section 3 | Second Way to First Way/Stadium interface |

COSTS AND FUNDING POSITION

- 7.21 Previous cost estimates for completing the SAC totalled around £18m (as reported to Committee Sep 2001).

7.22 Delays to the decision regarding the construction of the new National Stadium meant that GoL and subsequently the LDA froze the funding attributed to the SAC scheme until a final stadium decision was forthcoming. The SAC Phase 1 construction between Hannah Close and Drury Way was allowed to proceed however as it was common to both the SAC and the EAC.

7.23 Following the Stadium go ahead, a review of the SAC in September 2002 then identified further cost increases of £6,050,294 (2003 prices) attributed mainly to increased land costs. With a 5% per annum inflation escalator applied to the project timescales (2002-2010) the currently estimated cost of the SAC Phase 2 scheme is £24.803m (2003 prices), as shown in Table 1 below

Table 1 – SAC Phase 2 estimated costs

| | Item | Cost Estimate £ | % |
|-----|-----------------------------|------------------------|----------|
| 1.0 | Construction costs | 6,514,720 | 26.6 |
| 2.0 | Statutory/Professional fees | 1,554,000 | 6.4 |
| 3.0 | Land acquisition | 11,790,785 | 48.2 |
| 4.0 | Inflation allowance | 4,492,395 | 18.8 |
| | Plus costs already incurred | 351,087 | |
| | Grand Total | 24,802,987 | |

7.24 The most recent cost assessments were undertaken in July 2003 by JMP/Corderoy, assessing only sections 1 and 2 in separate contracted parts, suggest further cost increases based on EAC experience with regard to likely difficulties with utilities and contamination.

7.25 The JMP July 2003 figures now suggest that for section 1, without contingency costs, the total costs would be £6,633,878. This does however include £750,000 for construction of the western footbridge that was deleted from the EAC scheme. These costs are outlined in Table 2 below.

Table 2 – SAC Phase 2 estimated costs – section 1 only

| | Item | Section 1 Only |
|-----|--|-----------------------|
| 1.0 | Construction costs inc. Western Footbridge | 3,498,000 |
| 2.0 | Statutory/Prof/Design Fees | 1,109,000 |
| 3.0 | Land acquisition | 892,500 |
| 4.0 | Inflation allowance | 783,291 |
| | Plus costs already incurred | 351,087 |
| | Grand Total | 6,633,878 |

7.26 The majority of the £13.723m confirmed funding for the SAC is allocated from the Wembley Park SRB 2 and Destination Wembley SRB 6 Programmes (i.e. £11.5m albeit now both managed through the latter programme following reports to the Wembley Park SPB Board 30.01.03) with the remainder from WNSL S106 £2m.

7.27 Table 3 outlines the current funding situation and its financial year SRB profiling, as shown in the Delivery Plan for Destination Wembley SRB. Phasing will be adjusted in line with funding requirements according to the programming of, design land acquisition and construction for Section 1, if approved. The project will be programmed to be completed by the finishing of the National Stadium, currently September 2005. An amended profile of funding will be requested from the LDA, such that there are no funding shortfalls in any year.

Table 3 – SAC Phase 2 funding by financial year (SRB Board 30.01.03)

| | Up to 2002 | 02-03 | 03-04 | 04-05 | 05-06 | 06-07 | 07-08 | 08-09 | 09-10 | TOTAL |
|--------------|------------|--------|---------|---------|---------|------------|-------|-------|-------|------------|
| Funding | | | | | | | | | | |
| LA Capital | 151,771 | | | | | | | | | 151,771 |
| 3-1 SRB2 | 199,316 | 91,000 | 387,450 | 373,748 | 422,533 | 623,013 | | | | 2,097,060 |
| SRB 6 | | | | | | 9,300,000 | | | | 9,300,000 |
| Stadium S106 | | | | | | 2,000,000 | | | | 2,000,000 |
| Total | 351,087 | 91,000 | 387,450 | 373,748 | 422,533 | 11,923,013 | 0 | 0 | 0 | 13,722,538 |

SCHEME BENEFITS AND FUTURE OPTIONS

7.28 The construction of Section 1 of the SAC will have a number of benefits in highway and traffic terms:

- Provides an extension to the processional route which has been built under the current EAC contract
- Provide a three lane highway, with central lane used for turn facilities, serving the Estate.
- On event days, the Section 1 scheme will provide a three lane (tidal) link to the existing one-way system serving the industrial estate. Upon arrivals, two lanes of inbound traffic will be drawn into the existing route of South Way to the Stadium car/coach parks. Upon exit, the Stadium traffic will circulate clockwise around the one-way system to join the SAC through an improved junction from Fourth Way.
- Provide a route via Fourth Way which would be capable of serving as a diversionary route for any subsequent construction of Sections 2 and/or 3 of the SAC
- Make effective use of the funding opportunity currently available through the SRB programme, whilst minimising financial risks to the Authority.

7.29 Disadvantages remaining upon construction of Section 1 are:

- The SAC will flow into a retained one way system which is nominally two lanes.
- The processional route will not be fully achieved with ground level view of the Stadium maintained.

RISK ANALYSIS

- 7.30 Construction of the SAC will involve land purchase through either CPO or a parallel series of negotiations for acquisition by private treaty. With CPO the Council is obliged to pay compensation to the land owner and this is determined in accordance with Section 5 of the Land Compensation Act 1961 ensuring a market value for the property is achieved.
- 7.31 In making the decision to proceed with any CPO the Council would also need to be satisfied the public benefits of the SAC scheme outweighed the interference with the rights of the landowners outlined in the Human Rights Act 1998, as detailed in legal considerations above.
- 7.32 Moreover, when seeking to instigate CPO powers the Council will need to convince the Secretary of State that the scheme is implementable, both financially and technically. Any shortfall in funding or CPO for 'part-completion' of the SAC will reduce its chance of success and would increase the argument for a third party challenge. Even with a CPO approval in place the Council would need to serve a notice to treat within 3 years (unless otherwise agreed) or risk losing such powers.
- 7.33 Where, through a CPO process, a business is unable to carry on trading the Council also would need to pay the costs of relocation to an appropriate site elsewhere.
- 7.34 Furthermore, the land values along the route may be inflated due to the importance of the SAC scheme to WNSL. This would be particularly relevant for parties such as Access Storage and Ingersoll Printers if further elements of the SAC are completed to the east ahead of a 'final phase'.
- 7.35 The Planning and Compulsory Purchase Bill currently before Government is likely to change CPO rules and statutory blight issues over the next few years and this may make future proceedings less favourable to the Council.
- 7.36 Not constructing the SAC however could also present legal difficulties as it could be considered a breach of the WNSL S106 agreement (Schedule C paragraph 1.2).. However, a Court is not required to grant an injunction simply because there has been a breach of an Agreement and it is therefore unlikely to be successful if the Council's reason was due to insuperable funding difficulties.

- 7.37 WNSL could show that it had suffered losses as a direct result of the failure to construct the SAC. This could be linked to Condition 3 of the planning consent for the stadium which restricts the number of major events using the upper tier capacity to no more than 22 per year (excluding European and World Cup events where England/UK is the host nation) until such time as the SAC is completed. The capacity of the upper tier is over a third of the total capacity (39,239 seats) and so would represent a not inconsiderable financial restriction on revenues if it can be argued all other necessary approvals would have been forthcoming.
- 7.38 The WNSL S106 agreement obligates the Council to make 'reasonable endeavours' to ensure the SAC is constructed within ten years of the deed being signed. The S106 was finalised in August 2002 so it would be logical to assume that WNSL would need to wait for some years yet before they could begin any proceedings for failing to make such endeavours. It would also need to offset any losses against the £2m S106 SAC contribution that it would not have made to the Council.
- 7.39 The SAC scheme has inherent risks in common with any major infrastructure project, together with specific risks due to the financial, legal, temporal and political nature of the new National Stadium and a 2012 London Olympic bid. These are outlined in Table 6 below along with measures to seek to minimise their likely occurrence and impacts:

Table 4 – Risks associated with the SAC scheme

| | Risk | Likelihood/Impact | Risk management measure |
|---|--|--------------------------|---|
| 1 | Construction delays due to extended negotiations and legal challenges on land purchase | HIGH/HIGH | Begin negotiations now ahead of a CPO approval and seek LDA support if appropriate |
| 2 | Increased construction costs due to unforeseen circumstances e.g. dealing with uncharted utilities, removing contamination etc | HIGH/MEDIUM | Ensure a more comprehensive site survey is undertaken ahead of any works commencing |
| 3 | Construction delays due to a protracted CPO approval process | MEDIUM/HIGH | Seek LDA and Government support for a fast-track CPO approval and commence initial work now |
| 4 | Higher land acquisition costs and compensation payments than estimated | MEDIUM/HIGH | Initiate negotiations and CPO process asap and seek LDA support when undertaking negotiations |
| 5 | Legal action by WNSL post-2012 due to SAC non-completion | MEDIUM/HIGH | Seek WNSL support for a way forward option and prepare legal defence paper |
| 6 | Higher construction cost inflation (>5%) due to market supply constraints | MEDIUM/MEDIUM | Contract construction work asap and build fixed inflation % into the contract |

8.0 BACKGROUND INFORMATION

| <u>Details of Documents</u> | <u>File Reference</u> |
|--|-----------------------|
| | HC96110 |
| Planning Committee paper Feb 2001 | |
| Wembley Park SRB Board papers 30.01.03 | |
| SAC update to PSD Committee 08.05.01 | |
| EAC update to Exec 23.06.03 | |
| Planning Sub-Committee March 2002 | |

Any person wishing to inspect the above papers should contact: Phil Rankmore,
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