

<b>Bath &amp; North East Somerset Council</b>			
MEETING/ DECISION MAKER:	<b>Cllr Paul Roper, Cabinet Member for Economic and Cultural Sustainable Development</b>		
MEETING/ DECISION DATE:	<b>On or after 28<sup>th</sup> of June 2025</b> (for single Member decision)	EXECUTIVE FORWARD PLAN REFERENCE:	
		<b>E</b>	<b>3623</b>
TITLE:	<b>Somer Valley Enterprise Zone s172 Powers</b>		
WARD:	<b>Paulton</b>		
<b>AN OPEN PUBLIC ITEM</b>			
<b>List of attachments to this report:</b> Please list all the appendices here, clearly indicating any which are exempt and the reasons for exemption Appendix 1 - EQIA Appendix 2 – Site Area			

## 1 THE ISSUE

This report seeks authorisation for the Council to use powers under s172 Housing and Planning Act 2016 (“s172 Powers”) to enable the delivery of the SVEZ Scheme through the access of private land to undertake any surveys which are needed to inform the detailed design of the SVEZ Scheme, compliance with the LDO (through the discharge of conditions or by varying the same to support design changes), and promotion of the CPO/SRO and any other statutory requirements associated with these orders.

The Council submitted a report in July 2024 (EFP Reference: E3557) which secured authority from Cabinet to make and promote a compulsory purchase order (“CPO”) and take associated actions to acquire the land and rights required to deliver the Somer Valley Enterprise Zone (“SVEZ”), a mixed use commercial development at Old Mills north-west of Midsomer Norton with associated highway works (“the SVEZ Scheme”). The SVEZ Scheme has planning permission by way of a Local Development Order adopted by the local planning authority (“LPA”) in February 2024 (the “LDO”).

A further report (EFP reference: E3583) was made in November 2024 securing authority for a side roads order (“SRO”) under the Highways Act 1980 (“HA 1980”) and any traffic regulations orders (“TRO”) under the Road Traffic Regulations Act

1984 ("RTRA 1984") as may be required for the SVEZ Scheme, for the delivery of the associated highways works to deliver the SVEZ Scheme.

A previous Single Member Decision was made (**E3610**) to authorise the carrying out of s172-179 powers in connection with specific surveys to inform the design and mitigations required to discharge/vary the LDO conditions and the statutory requirements associated with the same. These Surveys have been successfully carried out under the Housing and Planning Act 2016 powers without the need to apply for a warrant.

The purpose of this further decision is to ensure that there is a more general delegation to allow for s172 survey powers to be used in the future.

## **2 RECOMMENDATION**

The Cabinet Member for Economic and Cultural Sustainable Development is asked to:

- a) Approve the exercise by the Council of s172 Powers as required for the purpose of undertaking surveys on private land in connection with delivery of the SVEZ Scheme.
- b) Delegate to the Director for Capital & Housing Delivery, the power to authorise the issue and service of notices to landowners to carry out any intrusive or non-intrusive surveys and investigations and to enter such land as may be required to deliver the SVEZ Scheme through the implementation of the CPO and SRO which the Council is authorised to carry out either by consent of the relevant landowner or under sections 172 to 179 of the Housing and Planning Act 2016 inclusive of the of issue of warrants for entry to the land as required.

### **Background**

To deliver the SVEZ Scheme, the Council:

- a) Adopted the LDO which applies across the SVEZ Scheme, inclusive of highways enabling works and which was confirmed by the LPA on 22 February 2024; and
- b) Is promoting a CPO and an SRO to acquire the land and rights that are required to deliver the SVEZ Scheme and deliver associated highways works (EFP References: E3557 and E3583).

The SVEZ Scheme boundary is shown on the plan at Appendix 2.

To discharge/vary the LDO conditions that enable the detailed design of on-site infrastructure that supports the CPO and facilitates delivery of the SVEZ Scheme, and ensure compliance with any other statutory requirements as necessary during the promotion of the SVEZ Scheme, the Council and their contractors require access to private land to undertake surveys under voluntary licence.

The Council and its land agents have sought to progress access negotiations for survey activity but have been unsuccessful in reaching agreement with some landowners. Due to the programme timetable and associated funding milestones which need to be reached, the Council expects that s172 Powers will need to be

used to facilitate access for survey activity where agreement cannot be reached. Such powers will only be utilised where all reasonable efforts to access via negotiation with landowners have been exhausted, or where access requirements are sufficiently urgent.

Access to land is essential to allow the Council and their contractors to secure complete survey results to discharge/vary conditions under the LDO, inform the progress of the detailed design of the SVEZ Scheme, and promote the CPO/SRO in compliance with the requisite funding milestones for the SVEZ Scheme as a whole.

For context, applicable types of surveys are anticipated to include:

- a. Ecology surveys which will commonly have a time critical window and therefore access to the land in short order.
- b. Surveys to inform the Council's compliance with biodiversity net gain ("BNG") requirements as part of delivering the SVEZ Scheme.
- c. Surveys which are required to inform detailed design, such as ground investigations, drainage CCTV and pavement cores

The Council will provide at least 14 days' written notice (as required by the Housing and Planning Act 2016 (the "HPA 2016")) each time access is required. All works will be fully reinstated following any intrusive surveying and compensation paid for any damage to the land and/or disturbance under s172 of the HPA 2016.

### **3 STATUTORY CONSIDERATIONS**

Under s172 of the HPA 2016, an acquiring authority may enter onto and survey or value land in connection with a proposal to acquire an interest in or right over land, providing the surveys are carried out at a reasonable time and the authority gives the owner/occupier at least 14 days' notice. This power is applicable specifically in contemplation of, or as part of, the exercise of CPO powers.

The power is only available to a body falling into the definition of an "*acquiring authority*" in s7 of the Acquisition of Land Act 1981, "*acquiring authorities*" are defined as "...the Minister, local authority or other person who may be authorised to purchase the land compulsorily". This power therefore applies to the Council as a local authority in connection with a proposal to acquire land or rights in connection with the CPO.

The owner/occupier may be entitled to compensation for any damage caused to the land as a result of the exercise of this power of entry. Any dispute arising in relation to compensation is to be determined by the Upper Tribunal (Lands Chamber).

Where access to land under s172 has been or is likely to be prevented by a landowner, acquiring authorities can apply for a warrant under s173 of the HPA 2016. Applications to the Magistrates' Court should include a draft warrant and witness statements to demonstrate that access to the land is required in connection with a proposal to compulsory acquire land and that reasonable attempts to obtain access by voluntary agreement has been undertaken. It is

important to note that an acquiring authority cannot use force without this warrant and paragraph 16.4 of the Government’s guidance on compulsory purchase<sup>1</sup> notes that verbal or written refusal of permission to enter land is not sufficient to demonstrate that access is likely to be prevented unless it is stated that a physical act to prevent access is going to be carried out.

Therefore, if the Council or its representatives are obstructed from access, further legal advice will need to be taken from the Council’s external legal advisers.

It is also relevant that the Council must comply with their statutory duties in connection with the LDO under the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (the “EIA Regulations”).

The purpose of this decision is to secure a delegated authority for the future use of survey powers without limitation to a specific set of circumstances. The Council will therefore scrutinise the purpose of, and reasons for, exercising powers under s.172 of the HPA 2016 on each occasion and take external legal advice where appropriate before serving survey notices.

**4 RESOURCE IMPLICATIONS (FINANCE, PROPERTY, PEOPLE)**

There are limited resource implications to exercising s172 Powers. The financial implications of this decision are already budgeted for within the approved Capital Budget for SVEZ. The costs of the survey works themselves are not the subject of this decision.

Under s172 compensation may be payable for any damage to the land surveyed or to any moveable items of property on it which is caused by the carrying out of the surveys. Landowners may also submit a compensation claim on the grounds of disturbance to the landowner’s use and enjoyment of the land. Any compensation disputes relating to damage by entry onto the land as a result of exercising s172 is to be determined by the Upper Tribunal (Lands Chamber).

These claims will be managed and scrutinised by the contractor who would make any compensation payment. The majority of the surveys required will be non-intrusive which will cause minimal disruption to landowners lessening the risk of compensation claims.

If warrants are required from the Magistrates’ Court (see above), legal costs would be incurred.

**5 RISK MANAGEMENT**

A risk assessment related to the issue and recommendations has been undertaken, in compliance with the Council's decision-making risk management guidance.

Decision E3557 considers specific risks in relation to the delivery of the SVEZ Scheme at section 10 however the following risks are relevant to the use of s172 Powers.

Risk	Mitigation
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<sup>1</sup> MHCLG’s Compulsory purchase process: guidance, 3 October 2024

<p>The Council cannot undertake the surveys in sufficient time delaying delivery of the SVEZ.</p> <p>Significant delay could be caused to the SVEZ Scheme programme because the surveys cannot be undertaken which could affect revisions to the LDO, the development of detailed design, and compliance with other statutory processes which may affect the promotion of the CPO/SRO and then could affect the funding available for the SVEZ Scheme as a whole.</p>	<p>This is a material risk and has knock-on effects to the promotion of the CPO and the SRO.</p> <p>The Council will continue (where practical) to negotiate with landowners to secure access under licence.</p> <p>However, the use of s172 Powers allows surveys to be undertaken to mitigate the risk to the SVEZ Scheme programme. It also helps avoid costs which may be incurred as a result of that delay.</p> <p>The use of powers also ensures that the Council can remain in compliance with obligations under the EIA Regulations.</p>
<p>The use of s172 Powers is unsuccessful in the first instance and a warrant is needed.</p>	<p>This risk is considered low but is not immaterial. The Council will need to review this if it occurs. It is hoped that the use of the s172 Powers will be successful.</p>

## 6 EQUALITIES

In connection with considering whether to take this type of action, the Council must pay due regard to its Public Sector Equality Duty ("PSED"). Pursuant to s149 of the Equality Act 2010, the Council must have due regard to the need to:

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- (b) advance equality of opportunity between persons who share a relevant protected characteristic (as defined in the Act) and persons who do not share it; and
- (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

Officers have had regard to the Council's PSED progressing the SVEZ Scheme to date and Members must be mindful of this duty when considering the recommendations in this Report.

The Council has prepared an Equality Impact Assessment ("EqIA") for the SVEZ Scheme and has regularly updated it. In order to comply with the PSED the Council must continue to monitor and consider equality issues routinely throughout the implementation of the SVEZ Scheme.

No specific EqIA has been undertaken in relation to the exercise of s172 Powers, but there are no additional impacts on protected characteristics envisaged over and above the general impacts of the SVEZ Scheme. If the Council becomes aware of any landowners subject to the survey powers having particular protected characteristics which affect how the powers are exercised, the Council will consult those persons and have due regard to any action needed to address any concerns (this may include, for example, alternative means of serving survey notices).

An Equalities and Diversity Impact Assessment Plan has been completed for the project (Appendix 2 – EqIA).

The Council will pay due regard to any specific equalities impacts before exercising individual survey powers.

## **7 CLIMATE CHANGE**

The Council declared a Climate Emergency in March 2019, committing it to providing the leadership necessary to enable Bath and North East Somerset to achieve carbon neutrality by 2030.

The purpose of this report is to obtain access to the SVEZ land for the purpose of carrying out site surveys. Assessment of the climate change and environmental implications of the SVEZ Scheme was undertaken by the Council, in its role as LPA in determining the LDO.

There are no climate change or environmental implications which stem directly from the authority to access the land for survey purposes.

## **8 OTHER OPTIONS CONSIDERED**

The Council has considered the other options available to it:

Entering into a licence agreement via negotiation. Voluntary agreement has not been possible with the landowners intended to be subject to the s172 Powers. If access by agreement cannot be reached, it would not be possible to conduct the required surveys and therefore progress with the detailed design of the Scheme and comply with or appropriately vary the LDO, and promote related orders such as the CPO and SRO all required for the delivery of the SVEZ Scheme.

Do nothing. However, this would ultimately result in the SVEZ Scheme not being capable of being promoted for various reasons highlighted in this report.

## **9 CONSULTATION**

This report has been prepared in consultation with the Cabinet Member for Economic and Cultural Development, the Leader, the Section 151 and Monitoring Officers, B&NES Legal and the Director for Capital & Housing Delivery.

The affected landowners have been consulted on the required surveys.

<b>Contact person</b>	Ellie Wintrup
<b>Background papers</b>	Cabinet paper: E3557 Cabinet paper: E3583

	Single Member Decision: E3610
<b>Please contact the report author if you need to access this report in an alternative format</b>	